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Vol. III

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 8

THE UNITED STATES OF AMERICA, PETITIONER

vs.

BETHLEHEM STEEL CORPORATION, BETHLEHEM SHIPBUILDING CORPORATION, LTD., BETHLEHEM STEEL COMPANY, ET AL.

No. 9

UNITED STATES SHIPPING BOARD MERCHANT FLEET CORPORATION, PETITIONER

vs.

BETHLEHEM SHIPBUILDING CORPORATION, LTD.

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR CERTIORARI FILED AUGUST 22, 1940
CERTIORARI GRANTED OCTOBER 14, 1940

INDEX

PAGE

TRANSCRIPT OF RECORD IN LAW CASE

VOLUME I

Statement of Claim 1

Exhibit 1-A 109
Exhibit 2-A 122
Exhibit 3 135
Exhibit 4 147
Exhibit 5 158
Exhibit 6 171
Exhibit 7 184
Exhibit 8 197
Exhibit 9 210
Exhibit 10 222
Exhibit 11 234
Exhibit 12 246
Exhibit 13 259
Exhibit 14 270
Exhibit 15 283
Exhibit 16 295
Exhibit 19 308

Affidavit of Defense with Set-off and Counterclaim 314

Exhibit A 430½
Exhibit C 431
Exhibit D 431

Plaintiff's Reply to Defendant's Set-off and Counterclaim 432

Exhibit 1 ..... 480½
Exhibit 2 481

Exhibit 3 482
Exhibit 4 483
Exhibit 5 486
Exhibit 6 489
Exhibit 7 491
Exhibit 8 492
Exhibit 9 495
Exhibit 10 497
Exhibit 11 500
Exhibit 12 501
Exhibit 13 503
Exhibit 14 506
Appearance of Charles Sinkler and Ralph B. Evans 508
Agreement and Order of Reference, appointing Owen J. Roberts, Esq., Referee 509
Report of Owen J. Robert., Esq., disqualifying himself from acting as Referee 511
Agreement appointing William Clarke Mason, Esq., Referee 513
Acceptance and Oath of William Clarke Mason, as Referee 514
Report of the Special Master and Referee and appendix thereto containing requests of the parties for findings and rulings thereon, and exceptions of the parties filed with the Special Master and Referee 515
Exceptions of the United States of America and United States Shipping Board Emergency Fleet Corporation to the Report of the Special Master and Referee 714
Opinion, Dickinson, J., upon exceptions filed by plaintiff and defendant to the Report of the Special Master and Referee 733
Opinion, Dickinson, J., upon ruling to amend caption of the case 745
Order changing caption of the case 746

Appearance of Evans, Bayard & Frick, as attorneys for the Plaintiff 747

Appearance of Richardson Dilworth as attorney for the Plaintiff 748

Opinion, Dickinson, J., upon Praecipe for Judgment, disallowing interest to plaintiff on the judgment 749

Opinion, Dickinson, J., upon Motion for Decree, assessing costs and the compensation of the Special Master and Referee against the defendant 752

Exceptions of the plaintiff, Bethlehem Shipbuilding Corporation, Ltd., to the rulings and decisions of the District Court 756

Order allowing exceptions 759

Judgment 760

Transcript of Docket Entries 762

Defendant's Notice of Appeal from the Judgment 764

Plaintiff's Notice of Appeal from the Judgment 766

Plaintiff's Statement of the Points on which it Intends to Rely 768

Defendant's Statement of the Points on which it Intends To Rely 770

Stipulation of the Contents of the Record on Appeal 774

Designation of Plaintiff-Appellant of the portion of the record to be contained in the record on its appeal 798

VOLUME II

PAGE

Evidence taken before William Clarke Mason, Esq.:

	Direct Ex.	Cross Ex.	Redirect Ex.	Recross Ex.
Harry Brown	824	994	1145	1210
Joseph A. Honsick	1213	1223	1238	
	1466	1470		
L. R. Sanford	1248	1280		
Joseph W. Powell	1325	1385		
Abe M. Lisson	1450	1458	1460	1461
			1462	
Charles M. Schwab	1472	1482	1490	
Charles Piez	1494	1515	1527	1529
Harry Brown	1531			
E. W. Geiss	1539			

VOLUME III

	Direct Ex.	Cross Ex.	Redirect Ex.	Recross Ex.
E. W. Geiss		1573		
George Stanley Radford	1600	1610		

Testimony before Owen J. Roberts, Esq., Referee:

EXHIBITS

A—Stipulation of Facts 1642
B—First Supplemental Stipulation of Facts, 1713
D—Memorandum of Agreement of Counsel 1721
G-4—Letter to Ralph B. Evans from Joseph J. Brown, dated May 1, 1928 1724
G-5—Letter to W. W. Robison from A. G. Smith, dated June 22, 1928 1726
G-6—Statement purporting to show general characteristics, dates of keel laying, etc., with respect to various ships delivered during the calendar year 1917 1730
G-7—Memorandum to F. A. Shick from H. A. Brecht, dated May 29, 1928 1731

G - 8 — Memorandum to H. A. Brecht from H. H. Shulze, dated May 25, 1928 1734
G - 9 — Schedule showing detail of plates and shapes purchased for hulls 251, 253, 254, 255, dated May 26, 1928 1735
G - 10—Schedule showing average plant labor rates and direct labor charges for hulls 244-5, 251, 253, 254, 255, dated May 28, 1928 1736
G - 11—Memorandum to F. A. Shick from E. W. Smith, dated June 9, 1926 1738
G - 12—Copy of a tabulation showing direct labor cost by months for certain hulls 1743
G - 13—Memorandum to F. A. Shick from J. Sidney Lewis, dated June 1, 1928 1745
G - 14—Letter to H. Speed from Union Iron Works Co., dated November 9, 1916 1746
G - 15—Letter to M. P. Geirrine from Richard B. Carr, dated March 23, 1916 1747
G - 16—Tabulation showing direct labor cost by months and plant earning rates for each month on certain hulls 1748
G - 17—Telegram to E. W. Geiss from J. Sidney Lewis, dated June 6 1750
G - 18—Tabulation showing comparison of weights of plates and shapes and average price of same 1752½
G - 19—Letter to W. W. Robison from H. G. Smith, dated October 25, 1928 1753
G - 20—Tabulation showing comparative cost of job 12 materials for hulls 244-5 and hulls 253-4 and 268-9 1755
G - 21—Letter to Ralph B. Evans from Joseph J. Brown dated July 6, 1928 1756
G - 22—Letter to Mr. Frick from W. W. Robison dated August 8, 1928 1758
G - 23—Letter to W. W. Robison from H. G. Smith dated August 8, 1928 1760
G - 24—Schedule of structural items as charged on hulls 244-45 and 253-54, and merged into job 12, hulls 268-69 and 1376-81 1762

G - 25—Tabulation showing comparative cost of job 12 materials on hulls 244-5, 253-4, 268-9 and 1376-81, dated August 2, 1928 1765
G - 26—Statement relating to costs with respect to hulls 4158 and 4159, dated July 16, 1928 1766
G - 27—Letter to W. W. Robison from plaintiff, dated June 30, 1928 1767
G - 28—Memorandum to F. A. Shick from G. H. Bankhard, dated June 14, 1928 1767
G - 29—Computation showing direct labor and average plant hourly rate at the Harlan plant of plaintiff, dated May 21, 1928 1769
G - 30—Computation showing total weight and cost per pound on hull steel according to plate and shape schedule at the Harlan plant, dated May 31, 1928 1771
G - 31—Letter to W. W. Robison from E. W. Geiss, dated June 19, 1928 1771
G - 32—Letter to Henry P. Brown from Chauncey G. Parker, dated January 17, 1927, together with enclosure referred to therein 1773
G - 33—Letter to Henry P. Brown from Ralph B. Evans, dated March 22, 1927 1783
G - 34—Chart prepared by Harry Brown 1785
G - 39—Letter to W. W. Robison from H. G. Smith, dated June 22, 1928 1786
G - 40—Letter to J. L. Ackerson from plaintiff, dated August 25, 1919 1788
G - 41—Letter to A. F. Pillsbury from John A. McGregor, dated September 29, 1917 1791
G - 42—Letter to Rear Admiral W. L. Capps from J. W. Powell, dated August 30, 1917 1794
G - 45—Computations prepared by Joseph A. Honsick 1796
G - 96—Letter to W. L. Capps from John A. McGregor, dated October 26, 1917 1797

G-97—Letter to Union Iron Works from F. T. Bowles, dated October 30, 1917 1803
G-101—Letter to A. F. Pillsbury from John A. McGregor, dated November 30, 1917. 1804
G-104—Letter to defendant from J. W. Powell, dated December 13, 1917 1806
G-105—Letter to defendant from J. W. Powell, dated December 14, 1917 1817
G-107—Letter to defendant from J. W. Powell, dated December 14, 1917 1819
G-109—Letter to defendant from J. W. Powell, dated December 19, 1917 1821
G-110—Letter to plaintiff from F. T. Bowles, dated December 19, 1917 1826
G-112—Letter to Charles Piez from J. W. Powell, dated December 20, 1917 1828
G-116—Letter to Charles Piez from J. W. Powell, dated January 3, 1918 1831
G-122—Letter to defendant from H. Brown, dated January 17, 1918 1833
G-124—Letter to defendant from J. W. Powell, dated February 12, 1918 1834
G-125—Letter to defendant from J. W. Powell, dated February 25, 1918 1836
G-126—Letter to defendant from J. W. Powell, dated March 7, 1918 1838
G-127—Letter to Bethlehem Steel Corporation from Charles Piez, dated March 18, 1918 1839
G-128—Letter to plaintiff from Charles Piez, dated April 8, 1918 1840
G-130—Letter to defendant from J. W. Powell, dated April 16, 1918 1841
G-131—Telegram to Charles A. Piez from plaintiff, dated April 18, 1918 1843
G-132—Letter to defendant from H. Brown, dated April 18, 1918 1843
G-133—Letter to plaintiff from Charles Piez, dated April 22, 1918 1847
G-134—Letter to plaintiff from Charles Piez, dated April 30, 1918 1848
G-135—Letter to plaintiff from H. Coonley,

dated May 15, 1918 1849
G-150—Extract from proceedings of defendant on June 9, 1920 1851
G-154—Document described as "Description of Graph" 1852
G-155—Explanation of chart prepared by Harry Brown 1854
G-159—Letter to W. W. Robison from H. G. Smith, dated October 25, 1928 1859
G-160—Memorandum to Edward N. Hurley from Charles Schwab, dated October 2, 1918 1862
G-161—Letter to the defendant from the Purchasing Agent of Plaintiff, dated February 7, 1918 1864
G-163—Statements of administrative and general expenses and property taxes for Union Iron Works Company, December 1, 1915 to December 31, 1917 1869
G-170—Letter to Mr. Brown from Mr. Evans, dated May 22, 1929 1876
G-175—Letter to Ralph B. Evans from Joseph J. Brown, dated September 7, 1928 1887
G-176—Letter to Ralph B. Evans from Ralph H. Hallett, dated September 21, 1928 1888
G-177—Letter to Mr. Evans from W. W. Robison, dated September 25, 1928 1891
G-178—Letter to defendant from plaintiff, dated April 19, 1918 1895
G-207—Letter to Ralph B. Evans from W. W. Robison, dated June 30, 1928 1897
G-208—Letter to plaintiff from Chester W. Cuthell, dated September 25, 1918 1898
G-209—Letter to Chester W. Cuthell from J. W. Powell, dated September 26, 1918 1899
B - 6—Memorandum to the Board of Trustees of defendant from Charles Piez, dated October 9, 1918 1900
B - 7—Extract from the minutes of the Board of Trustees of defendant on April 30, 1918 1903
B - 10—Statement showing summary of indus-

trial group statistics for the years 1926 and 1927 1906
B - 11—Statement showing manufacturing profit of United States Steel Corporation during the years 1916 to 1918, inclusive 1907
B - 14—Telegram to plaintiff from Underwood, dated March 19, 1918 1908
B - 17—Letter to plaintiff from Morris Down Farris, dated June 27, 1918 1908
B - 18—Letter to Charles Piez from J. W. Powell, dated July 29, 1918 1910
B - 19—Letter to J. W. Powell from Charles Piez, dated August 1, 1918 1911
B - 20—Letter to defendant from H. Brown, dated August 12, 1918 1913
B - 23—Letter to plaintiff from Chester W. Cuthell, dated December 21, 1918 1915
B - 24—Letter to defendant from J. W. Powell, dated December 28, 1918 1917
B - 25—Letter to J. W. Powell from Charles Piez, dated February 1, 1919 1919
B - 28—Memorandum to the Vice President of defendant from F. T. Bowles and G. S. Radford, dated January 5, 1918 1920
B - 29—Letter to plaintiff from Charles Piez, dated January 5, 1918 1921
B - 30—Letter to plaintiff from Charles Piez, dated January 5, 1918 1925
B - 31—Letter to plaintiff from Charles Piez, dated January 5, 1918 1928
B - 33—Summary of hours for 9100 ton vessels built at Fore River plant of plaintiff 1931
Order Directing that certain Exhibits and Papers Be Forwarded to Circuit Court of Appeals 1932

TRANSCRIPT OF RECORD IN EQUITY CASE

Bill of Complaint 1934
Exhibit A 1997
Exhibit B 1998
Exhibit F 1999
Answer of the Defendant, Bethlehem Steel Corporation, to the Bill of Complaint 2000
Answer of the Defendant, Bethlehem Shipbuilding Corporation, Ltd., to the Bill of Complaint 2026
Exhibit 1 ..... 2088½
Exhibit 10 2089
Exhibit 18 2118
Answer and Counterclaim of the Defendant, Bethlehem Steel Company, to the Bill of Complaint 2143
Answer of the Defendant, Fore River Shipbuilding Corporation, to the Bill of Complaint 2172
Answer and Counterclaim of the Defendant, Union Iron Works Company, to the Bill of Complaint 2202
Complainant's Reply to the Claim for Credit and Counterclaim of the Defendant, Bethlehem Shipbuilding Corporation, Ltd., to the Bill of Complaint 2234
Exhibit A 2273
Complainant's Reply to the Claim for Credit and Counterclaim of the Defendant, Bethlehem Steel Company 2273
Complainant's Reply to the Claim for Credit of the Defendant, Fore River Shipbuilding Corporation 2284
Complainant's Reply to the Claim for Credit and Counterclaim of the Defendant, Union Iron Works Company 2295

Agreement and Order of Reference 2306
Order Appointing Substituted Master 2310
Final Decree 2311
Plaintiff's Notice of Appeal 2312
Statement of Plaintiff-Appellant United States of America of the Points on Which It Intends to Rely on Its Appeal from the Judgment 2313
Docket Entries (No. 3315 March Term, 1935) 2316
Report of Owen J. Roberts, Esq., Disqualifying Himself from Acting as Referee, filed July 24, 1930 2318-511
Report of the Special Master and Referee, dated and filed February 7, 1936, including Exhibits A and B thereto and the Appendix thereto containing Requests of the Parties for Findings and Rulings thereon and Exceptions of the Parties filed with the Special Master and Referee 2318-515
Exceptions of the United States of America and United States Shipping Board Emergency Fleet Corporation to the Report of the Special Master and Referee, filed February 25, 1936 2318-714
Opinion of Oliver B. Dickinson, Judge of the United States District Court for the Eastern District of Pennsylvania, upon Exceptions filed by Plaintiff and Defendant to the Report of the Special Master and Referee, filed June 3, 1938 2319-733
Opinion of Judge Dickinson upon Præcipe for Judgment, disallowing interest to Plaintiff on the Judgment, filed September 23, 1938 2319-749

Opinion of Judge Dickinson upon Motion for Decree, assessing costs and the compensation of the Special Master and Referee against the Defendant, filed December 23, 1938 2319-752

Stipulation of the contents of the Record on appeal 2319-774

Evidence taken before William Clarke Mason, Esq., pages 1 to 1024, filed April 4, 1931 and pages 606 to 610, inclusive, of the Evidence before Owen J. Roberts, Esq. 2320-815

Exhibits A, B, D, G-4, G-5, G-6, G-7, G-8, G-9, G-10, G-11, G-12, G-13, G-14, G-15, G-16, G-17, G-18, G-19, G-20, G-21, G-22, G-23, G-24 G-25, G-26, G-27, G-28, G-29, G-30, G-31, G-32, G-33, G-34, G-39, G-40, G-41, G-42, G-45, G-96, G-97, G-101, G-104, G-105, G-107, G-109, G-110, G-112, G-116, G-122, G-124, G-125, G-126, G-127, G-128, G-130, G-131, G-132, G-133, G-134, G-135, G-150, G-154, G-155, G-159, G-160, G-161, G-163, G-170, G-175, G-176, G-177, G-178, G-207, G-208, G-209, B-6, B-7, B-10, B-11, B-14, B-17, B-18, B-19, B-20, B-23, B-24, B-25, B-28, B-29, B-30, B-31, B-33 2320-1642

Order of the District Court filed April 1, 1939, pursuant to Rule 75 (i) of the Federal Rules of Civil Procedure that the papers and exhibits mentioned therein admitted in evidence at the second hearing be sent to the Appellate Court in lieu of copies 2320-1932

Certificate of Clerk 2321

Proceedings in U. S. C. C. A., Third Circuit 2322
Minute entry of hearing 2322
Opinion, Maris, J 2323
Judgment, Cause No. 7045 2333
Judgment, Cause No. 7046 2333
Clerk's certificate 2334
Orders allowing certiorari 2335

VOLUME III

Q. It does not include the effect of the revisions subsequently made by other or supplementary stipulations? A. No, it does not.

Q. If effects were given to such revisions what would be the result? Would it increase or decrease Bethlehem's prices?

A. It would decrease Bethlehem's claimed prices.

Cross Examination

BY MR. HALLETT:

Q. What was the purpose of submitting this Exhibit B-12 to the Fleet Corporation?

A. The purpose of submitting it to the Fleet Corporation was that it might be useful in our many attempts to reach a settlement with the Fleet Corporation.

Q. In other words, as I understand it, you made a proposition that you would settle on the 10 per cent. basis arrived at in the American Shipbuilding Company, program, was not that it?

A. I think I did make a proposition one day that Bethlehem would be entirely willing to settle its claim with the Fleet Corporation upon the basis of the American Shipbuilding Company's contract of October 24, 1918, if the contract was interpreted in accordance with the Exhibit prepared by me and which is now before you.

Q. And it was only on agreement to interpret that contract in the way you have now interpreted

the contract as shown by Exhibit B-12 that you would accept the American Shipbuilding Company settlement basis; is that right?

A. I think that is substantially right, yes.

Q. You were familiar, were you not, with the memorandum of Mr. Schwab to Mr. Hurley of October 2, 1918, G-160, at page 492 of the Documentary Evidence?

A. I think I am, but may I see it, please? Yes, I am familiar with it.

Q. And, so far as you have been led to believe, American Ships Exhibit B-8 was a contract which was the result of the agreement outlined in Exhibit of October 2nd, 1918, G-160; is that not so?

A. I have always understood—

MR. WOOD: I think it is already in the record. This letter was not there and both Mr. Piez and Mr. Schwab testified with respect to the relation between this contract and the memorandum.

MR. HALLETT: Will you accept that the one came from the other?

MR. WOOD: I stand on what the record shows.

MR. HALLETT: I am trying to find out what this man understood.

MR. WOOD: Go ahead.

BY MR. HALLETT:

Q. What was your understanding?

A. I have always understood that the contract with the American Ship was revised because of the discussions between Mr. Farr and Mr. Schwab and I have never been told nor have I ever known who drafted the contract and who included the clauses which are included therein, or whose idea it was to

write out a contract so much more liberal in its terms than our contract. I don't know.

Q. Do you mean more liberal than your cost plus contracts?

A. Our so-called ship contracts, yes.

Q. Do you know anything about the accounting system of the American Shipbuilding Company?

A. Nothing whatever.

Q. Do you know anything about the manufacturing situation of their plants in 1917, 1918 and 1919?

A. I was in some of their plants but I don't know how the result of such manufacturing was recorded on their books.

Q. You don't know whether or not this contract B-8 was an attempt to write up a contract which was commonly known as a cost plus 10 per cent. contract, do you?

A. No.

Q. Do you maintain that this B-12 would result in Bethlehem getting only cost plus 10 per cent. profit?

A. No. I don't make any claim as to the amount of profit Bethlehem would have made under that type of contract. I merely attempted to show the result which would have come about had I applied the American Ship contract provisions to our shipbuilding program.

Q. Do you want the Master to understand that if Mr. Schwab had come to the same agreement with Bethlehem in 1918 that he came to with Mr. Farr of the American Shipbuilding Company that the contract should be revised to a cost plus ten per cent. profit basis, Bethlehem would claim these items?

A. I didn't say that.

Q. You don't want him to understand that?

A. I don't want him to understand except just exactly what the statement sets forth and nothing more than that.

Q. You know absolutely nothing about the situation of the American Shipbuilding Company with respect to their accounting process, do you?

A. No.

Q. You have no means of knowing that when an allowance was made to them of 25 per cent. for overhead that was not an allowance to reimburse them for their actual overhead, do you?

A. I have no such knowledge.

Q. If you secured an agreement to get 25 per cent. overhead on the same form here it would have resulted in considerable extra profit to Bethlehem, would it not?

A. Extra profits over what?

Q. Over 10 per cent. of the cost?

A. I think I may safely say that 25 per cent. of direct material and direct labor is something more than our actual cost.

Q. Have you figured out how much?

A. Not definitely, no, sir.

Q. When did you make this Exhibit B-12 up?

A. As I stated before, approximately three and a half years ago I am only guessing.

Q. You submitted it somewhere around June of 1926, as a matter of fact, did you not?

A. It may be.

Q. And you presented it in the hearing before Mr. Roberts, did you not?

A. Yes.

Q. You never have been interested to find out how much your item of $142,658,314. was in excess

of the stipulated cost of labor, material and overhead?

A. I have been interested for my own information. I felt that it had nothing to do with the comparison.

Q. And you did not care how much profit might be in such settlement?

A. No, I didn't care.

Q. You were not interested in the profits that might be in the settlement?

A. No.

Q. You were simply trying to show that if Bethlehem was about to secure the same kind of a contract that the American Ship secured they would receive the items that you set up here?

A. That is right.

Q. Did you notice in Article 1, paragraph one, defining cost of the contract, Exhibit B-8, that it provides that the cost of all such ships, whether heretofore or hereafter constructed, such costs shall be calculated according to the established accounting practice of the contractor, material, labor and freights and other elements of cost being computed at the rate actually paid for and shall include 25 per cent. on the cost so computed for (A) General operating overhead; (B) Special depreciation for additions, alterations and equipments of plants due to excessive war costs.; did you notice that particular section or part of the 25 per cent. for depreciation?

A. Yes.

Q. Have you made any split in your claim for 25 per cent.?

A. No.

Q. Did you also notice that on item 2, relating to profit, that there was a profit of 10 per cent. upon

such cost and overhead but not upon special depreciation?

A. Yes, I noticed it.

Q. You made, however, a claim of 10 per cent. on the total cost of your contract material, labor and overhead of 25 per cent.?

A. Yes, I had no means of splitting. I had no means of telling what the item B under article 1, item 1, what percentage that was of the 25 per cent.

Q. So, not having any information, you made no allowance but claimed the full 10 per cent. on your total of material, labor and overhead?

A. No, sir. Naturally that item B is a very small proportion of the 25 per cent. Its very nature makes it apparent it must be a small percentage. I don't know how small. I could have used two or three percent. or some other percentage to which I should not have added 10 per cent.

Q. The proposition that you submitted in that form of B-12 to the Fleet Corporation was not accepted, was it, by the Fleet Corporation?

A. It was never officially submitted as a means of settlement. It was merely in all discussions, there were various discussions of an attempt to reach a settlement, this particular Exhibit was prepared by me and laid down on the desk for what it was worth.

Q. And another suggestion was made to you; was it not, by the officials of the Fleet Corporation, that the excess items be taken out of this submission and see how you came out with a 15 per cent. profit on your actual cost?

MR. WOOD: Objected to. I am perfectly willing to have the whole story of the effort by Bethlehem to settle this controversy with the Government go on record but I am prepared

to say now that if it does it will show the most disgraceful performance on the part of the Government that has ever come to my attention.

MR. HALLETT: I challenge that statement.

MR. WOOD: We say that the negotiations are of no materiality to anything introduced here.

THE MASTER: As the Master recollected Exhibit B-12 was offered in evidence and was a comparison between the assumed basis of settlement with the American Shipbuilding Corporation and what would have been realized to Bethlehem had a similar basis been adopted in adjustment with Bethlehem on the interpretation of the American Shipbuilding Contract given by this witness, and it was offered for the purpose not of showing an endeavor to reach a settlement with the Fleet Corporation, but to show what the result would have been to the Shipbuilding Corporation had a similar contract with such an interpretation been entered into by the Fleet Corporation with the Bethlehem pursuant to Mr. Schwab's instruction. That was the understanding of the Master as to the purpose of the offer and of the testimony relating to this Exhibit. The Government has gone beyond that and has asked the witness what use he had made of the Exhibit in his discussions with the representatives of the Fleet Corporation. Now, to the extent it has gone there has been no objection. If an objection had been made the Master probably would have regarded that as not proper cross examina-

tion, and it seems to the Master that if we are going further into the discussions between this witness and other representatives of Bethlehem and the representatives of the Fleet Corporation concerning the settlement, that we have got to go into all of them or else it is of no value, anywhere in showing the general atmosphere and, so far as the Master is concerned, it is of no value at all to a decision of this case because it all happened after the facts we have to consider here.

MR. HALLETT: I realize that and I think Exhibit B-12 has no relevancy or competency in this case, but the witness has testified that these figures here were taken from the stipulation. He later submitted another proposition which contained apparently figures based upon the same set up but which were radically different and in challenging these figures here we are getting ready to offer this second statement of his which was made within two or three weeks of this one.

THE MASTER: I think this is probably a fair way to deal with the situation. The testimony that the Master has before him shows that the witness' figures for comparative purposes are based upon certain assumptions concerning the American Shipbuilding Company contract, conceded by the witness to be subject to differences of opinion. If the actual figures of the settlement with the American Shipbuilding Corporation are of use to aid the witness in making his comparison and they are available—

MR. HOWARD: I think you have a misun-

derstanding: We are not putting in any figures of the American Shipbuilding Company settlement because that I don't see would be any aid at all to you.

MR. WOOD: They were considerably higher.

THE MASTER: You are both assuming what the Master cannot assume. Here is the point. It seems to me, at least in the state in which the case is now before the Master, that the Government's charge of impropriety at least on the part of Mr. Schwab in failing to adopt the same policy toward Bethlehem that he insisted on having Mr. Hurley adopt toward the American Shipbuilding Corporation, is an issue that must be met by Bethlehem as best it can if it deems it important and, apparently, Bethlehem deems it important at least to present some testimony to show what the effects would have been had Mr. Schwab adopted the same policy towards Bethlehem. Now they are in the position, as I understand it, of being forced to assume certain facts which are not easily available to them or at least have not been made available to them by either the Fleet Corporation or the American Shipbuilding Corporation. To the extent that their interpretation of the contract is made the basis of these figures it is, of course, purely speculative as to whether that is the proper or the improper interpretation and goes to affect the value of their comparison. If the Master is forced to reach his own interpretation of that contract and adjust these figures on his interpretation it may be that a higher or lower result could be reached. Now whether it is important to the Government to

combat the effect of this along the lines of these assumed interpretations by this witness is for Government's counsel. To the extent that you can discredit the comparison the Master will receive any testimony that you choose to offer or let you examine this witness in any way that you please. I think it would be wise, however, not to go into all the various negotiations.

MR. HALLETT: I had not intended to but merely just to lay the foundation leading up to a presentation by him of entirely different figures of cost.

THE MASTER: Suppose we try to do that without going into the detail of the settlement.

BY MR. HALLETT:

Q. As I understand it the figure of direct labor and material cost used by you in iteni No. 1 of Exhibit B-12, derived by you from the stipulated figures?

A. I said they were taken from the same sources as the stipulated figures. They are, of course, only a portion of the stipulated figures. They are the material and direct labor portion.

Q. Well the figures in the stipulation of cost would be comparable, would they not, to the combination of items 1 and 2 in your Exhibit B-12 except for the addition of the $1,020,719.00 added for scrap?

A. No.

Q. They would not?

A. No, because in the one instance, in the stipulated figures the expense item is the actual cost to Bethlehem.

Q. And what else have you in one and two that does not appear in the stipulated figures?

A. The stipulated figures are made up of, the direct material, direct labor, actual plant overhead expense, actual A. & G. expense, and depreciation. The total of those items result in the figure which is disclosed in the stipulation. That could not be the same as the total of items 1 and 2 of my statement since we have departed from actual costs when we use 25 per cent. of direct labor and direct material to establish the other items of cost.

Q. Then let me put it this way. A comparison of the stipulated figures of cost for these contract ships, adding to those stipulated figures the sum of $1,020,719., with your item of $142,658,314., which is the combination of one and two, would indicate the excess that is contained in this as compared with the stipulated figures; would that be correct?

A. It would indicate the difference. If there was an excess it would indicate the excess and if there was a loss it would indicate that.

Q. You don't know whether there is an excess or not?

A. Yes, I understand it is an excess.

Q. Do you know whether it is a substantial excess?

A. I think it is substantial.

Q. And you have claimed a profit of 10 per cent. on the total of one and two without making any allowance for any special depreciation that may be included in the 25 per cent.?

A. That is right.

Q. On item No. 4 which is 1½ per cent., that is largely what you call obsolescence, or amortization, that 1½ percent. allowance?

A. I won't attempt to define what it is. The contract states what it is for.

Q. You say that you used here base price plus fee. Now I don't know as that can be entirely accurate because I noted you have contract 182 in here. As I remember contract 182 was a cost plus a fixed amount of 10 per cent.?

A. Yes, it was.

Q. And how did you arrive at the $8,960,000.?

A. I think you will find that contract 182 covered two ships. Contract 465 covered six similar ships, and since there was no base price plus a fee in contract 182 I used one-third of $26,880,000., which is the amount I used for contract 465.

Q. Already having a contract on 182 of cost plus 10 per cent. with a definition of cost in it you considered that if you had had all of your contracts changed to approximately the cost plus 10 per cent. basis, you would be allowed this in addition to the contracts you already had?

MR. WOOD: If that is your interpretation let it go but it certainly is not what the witness said.

BY MR. HALLETT:

Q. Now, of course, the surplus material the Government had paid for?

A. Oh yes.

Q. And they had also paid for the scrap which is included in item 1?

A. They paid for the material from which the scrap resulted, yes.

Q. So that under the Bethlehem situation, the granting to Bethlehem of the scrap and the surplus

material would be an additional allowance to Bethlehem, would it not?

A. Yes.

BY THE MASTER:

Q. Speaking of those two items, as I understand it, the witness has assumed that the Fleet Corporation also paid for that same material in its dealings with the American Shipbuilding Corporation. You have assumed that?

A. Oh yes.

Q. You don't know whether it is a fact or not?

A. The American Ship contract as I recall had allowed the American Shipbuilding Company to retain the scrap and surplus material. It was a different thing in our case because we had to credit the value of the scrap.

Q. I understand that perfectly but you don't know whether the American Shipbuilding Company actually purchased that themselves or whether it was purchased on the same basis that it was purchased in your case, by the Emergency Fleet?

A. I had not from a reading of the contract. They said that the costs usually cover all direct labor and that was the material from which scrap and surplus resulted.

Q. So it is true that the same method of purchase was adopted by the Fleet Corporation in the American Shipbuilding case as was adopted for you?

A. Exactly the same.

BY MR. HALLETT:

Q. Originally with the American Shipbuilding Company those were lump sum contracts, were they not?

A. Yes, they were.

Q. And under lump sum contracts the shipbuilder itself does its own purchasing of material?

A. Yes.

Q. You don't know what the situation was in October 1918 as to how much purchasing they had done at that time, do you?

A. No.

Q. You don't know whether or not they may have made such purchases as indicated that they would have some surplus material on hand, do you?

A. No.

Q. Bethlehem was building requisitioned ships, were they not, for the Government?

A. Yes.

Q. At Fore River, Moore, Harlan, Sparrows Point and Union?

A. Yes.

Q. Had you any indication or any facts to show whether or not your raw material inventories were not used on these ships that you had in hand on December 31, 1917?

A. It is entirely likely, and it must be true that the requisitioned ships used some of this material. It is merely a formulae adopted by me to give expression to what I thought was a proper interpretation of that clause in the contract, and, as I previously stated, it is not in the contract, and I didn't know what to use so I just used this.

Q. Did Bethlehem have any plant inventories?

A. What do you mean by plant inventories?

Q. Inventories of their different plant equipment and that sort of thing?

A. Well we knew the items of equipment contained in our property plant account. The materials I am speaking of here are entirely raw materials.

Q. I understand that but I am asking you if Bethlehem did not maintain—it may not have been called an inventory—but it had a plant account, didn't it?

A. Oh yes.

Q. And in the course of the audit with the Fleet Corporation the plant account was gone all over, was it not?

A. Yes indeed, very thoroughly.

Q. And there was considerable dispute between you and the Fleet Corporation as to what should have been in that plant account and what was in there?

A. Yes.

Q. And there was a readjustment of that plant account, was there not?

A. Yes.

Q. It may be possible, that with the American Ship contract, inasmuch as this adjustment is contained in a depreciation, that it meant an adjustment of inventory values of the plant account; is that correct?

A. No, I wouldn't think that that would be the natural interpretation.

Q. Have you given us any allowance for the amount of this inventory that might have been used on these requisitioned ships?

A. Mr. Hallett—

Q. Answer yes or no.

A. I can't answer it yes or no. I told you twice, I think, that this was merely a formula adopted by me.

Q. Well you charged 100 per cent. at Moore, Harlan and Sparrows Point, on the contract ships, did you not?

A. No.

Q. You did not?

A. I said a hundred per cent. of the plant facilities was available for commercial work.

Q. No, I am talking about adjustment of raw material inventory?

A. Yes.

Q. As I understand it, these percentages of use which you applied in the depreciation and amortization were arrived at by you by comparison of the total contract labor at the plants with the contract labor charged to these contract ships plus the contract labor charged to inter-plant work?

A. That is what it is supposed to be.

Q. Was any of that interplant work chargeable to the requisitioned ships?

A. Well if it was I am not supposed to have used it. I was not intending to use it if it was. This percentage is supposed to be what I stated it to be.

Q. Do you know whether it was?

A. I was asked at the last hearing whether this percentage included requisitioned ships and I recall my answer was they were not intended to include requisitioned ships, and then later, in answering a question to me by the Master whether they were or were not included I said, "I will state definitely they are not included."

Q. Are you finished?

A. No. The figures, of course, are approximate. The use is approximate. After all I could not pin it down to a definite per cent., nor could I pin it down to definite time or number of hours. The interplant work is very complicated, the records of them were no longer in existence. As I said, I took a direct wage of the ship and added to it something which I

supposed would cover interplant work. I am not claiming that the figures are 100 per cent. right.

Q. In the contracts which the Fleet Corporation entered into with Bethlehem and in the negotiations for those contracts it appeared that Bethlehem refused to pay out for plant extensions necessary for these ships any money of its own, did it not?

A. I think we made that statement to the Fleet Corporation.

Q. And, as a result of the position taken by Bethlehem, the Government spent some $4,825,000.; is that not right?

A. It actually spent $4,632,000.

Q. And those were the plant extensions which Bethlehem said were necessary for the construction of these ships in order to get them out as the Government wanted them; is that right?

A. I think the contract speaks for itself, but I think that is approximately right.

Q. The Bethlehem, spent on these same items, for which it was however not reimbursed by the Government, $627,000.?

A. That is right.

Q. And then, as I understand it, during the progress of the work and as a result of the re-audit, approximately $1,800,000. worth of items were taken out of overhead and transferred to capital account in our agreement with Bethlehem?

A. What actually happened in the re-audit or the audit of our operating expense account, there were items of cost which the Fleet Corporation disallowed. They said the reason for this disallowance was that they were not proper operating expense items but were actually capital items. We never altered our books. That cost is still charged by us

against the cost of the ships through operating expense. We never capitalized the amount the Government took as capital, but this $1,800,000. was an attempt by me to draw from the disallowed cost list the items thrown out on the theory that they should be capitalized.

Q. And this $3,508,895. expenditures made by Bethlehem in connection, in 1917, with improvement and enlargement of their plant, and also in 1918 for the extraordinary work they were doing but which was not required for the particular contract ships; is that right?

A. It was put in there for a war program.

Q. And you started a war program back in 1914 or 1915, did you not?

A. Yes.

Q. And when you speak of a war program you mean the increase or the gravy which the shipbuilders got as a result of the war; is that right?

A. Well I don't know about the gravy. Undoubtedly we did increase our shipbuilding facilities to prepare for contracts for ships which we hoped we would get as a result of the war in Europe.

Q. And when did the slump come?

A. During 1919 and 1920 there were a few contracts for domestic merchant tonnage by some of the oil companies. Upon the completion of those few ships, which were built in 1919 and 1920, there was a complete collapse of shipbuildings, which occurred, I should say, in 1922 or thereabouts.

Q. Did Bethlehem acquire any other plants at that time or shortly after that?

A. It has since acquired certain repair yards.

Q. When?

A. I will say seven or eight years ago. Sometime after the war.

BY THE MASTER:

Q. Your answer to one of Mr. Hallett's questions makes a confusion because of your answer to one of mine. I understood you to say in dealing with this amortization item that the amount on which you took the 65 per cent represented the total expended in 1917 and 1918 to afford facilities needed for the building of the ships required to meet the Emergency Fleet Corporation's program?

A. I am sorry about it. Of the total expenditures made by Bethlehem on its own account in 1917, 1918 and 1919, I took the percentage of such expenditures which were used for the Fleet Corporation ships and so I did not take the entire expenditure. I only took a portion of it and claim amortization of that portion which were used by the Fleet Corporation.

Q. That is my understanding, that the total which you have here does not represent the total of the expenditures for plant increase?

A. Yes, it does represent the total of our plant expenditure. It is all plant expenditures but I am not claiming amortization on the entire expenditure. I am claiming it only on the proportion of such facilities as were used by the Fleet Corporation, and your total which was used for the Fleet Corporation is $10,767,916.?

A. That is true, but Bethlehem's expenditures during 1917 and 1918 is $6,145,931., do you notice?

Q. But I still get back to my original question and as you now answer it it is the same although I understood it different when you were answering Mr. Hallett. Let me put it this way. Am I correct in my

understanding that in the total figure which is represented in this chart B-12 there is no amortization claimed except the amortization upon the capital investments in plant facilities required for building of the ships for the Emergency Fleet Corporation?

A. That is right.

BY MR. HALLETT:

Q. As I understand the situation the Bethlehem Shipbuilding Corporation or its preceding plant companies had entered upon a certain construction program at their plants prior to the United States entering into the war; is that so?

A. Yes.

Q. And they were taking such contracts as they could take during that period, all during 1916 and 1917?

A. Yes.

Q. And, in connection with their program of construction they expanded, as I understand it, to figures referred to in your amortization item for 1917 and 1918 in connection with that general program; is that not so?

A. Yes.

Q. And that those were the parts that were used in connection with the Navy work and the requisitioned ships?

A. Yes.

Q. When the United States or the Fleet Corporation started its additional tonnage program, if I can so designate it, Bethlehem took the position that that would require additional plant facilities; is that so?

A. Yes.

Q. And Bethlehem designated what would be necessary to carry out that additional plant facility?

A. Yes.

Q. And the approximate cost of it?

A. Yes.

Q. And insisted that the United States should pay the cost of these additional facilities?

A. That is right.

Q. And the United States did pay it except for the $672,000.?

A. That is right.

Q. And with the additional work in plant which Bethlehem put in to build these contract ships, is the four million odd dollars and the $672,000.00; is that not so?

A. That is true, to be tied definitely with the contract ships.

BY THE MASTER:

Q. Then what other ship?

A. There was no other ship but he is trying to distinguish.

BY MR. HALLETT:

Q. You mean there were no requisitioned ships?

A. Yes, there were. I mean there were no other ships for which the plant was specially built. The plant was built for use of all ships. Such plant as we had, such plant as the Fleet Corporations put in, such additions as we made on our own account, were used indistriminately for all ships. The facilities installed by the Fleet Corporation were used by requisitioned ships. For instance, they consisted of pipe lines, underground wire and so on, and they were intermingled and you could not separate them.

Q. We understand that, and that is the problem, but I am afraid I am still in doubt now as to whether you understood Mr. Hallett or whether you understood me, because as Mr. Hallett put the question to

you and as your answer is now on the record, it would appear that the Fleet Corporation's contribution to Bethlehem of $4,825,000., plus Bethlehem's expenditure of $672,000, was all that was needed to furnish full and complete facilities for the building of the Emergency Fleet Corporation ships whereas, as I understood it originally in your testimony, in addition to the facilities that that investment represented, there was a proportion of your other facilities, estimated by you to have a capital value of $3,500,000., also used at the same time for the building of the Fleet ships?

A. I am extremely sorry if I gave you any different impression. Your statement is entirely true that, in addition to the facilities provided by the Fleet Corporation we used all such additional facilities as we had. We certainly did not build the ships entirely from the facilities supplied by this $4,800,000.

Q. So that in the discussion with the Fleet Corporation, as we now understand it, and as I thought I understood it originally, what Mr. Hallett really produces is this, that plus what you already had, it was necessary for you to expend approximately $5,000,000. more, in round figures, or $4,750,000. more in order to meet their program?

A. That is right. It was necessary that the Fleet spend that much more and despite the fact that we said we would not spend a penny on plant facilities we actually did spend $1,600,000. in 1918 and these facilities were likewise used in the building of the Fleet Corporation's contract ships.

THE MASTER: If you want to examine further on that all right but, as I understand, the fact as it now appears on the record is that the Bethlehem devoted to the building of the

ships of the Emergency Fleet Corporation, in accordance with the estimate made of the capital expenditures to be so allocated by this witness, a total of $10,767,916.

THE WITNESS: May I clear it up.

THE MASTER: Yes, if you can.

THE WITNESS: We did use facilities the total value to the Fleet Corporation of which was $10,767,916. but, in addition to such facilities in the building of the contract ships for the Fleet Corporation we used our plant which was there prior to 1917.

Q. I understand that, but this is the amount which was, for the purpose of your calculation here, the amount of your total capital investments that were subject to the amortization to the extent of 65 per cent.?

A. Yes.

BY MR. HALLETT:

Q. You don't want to create the impression that the amount of expenditures of $4,000,000. in 1917 and $1,592,000. in 1918 were expended by Bethlehem in contemplation or for the particular performance of the work on the contract ships, do you?

A. No indeed I do not.

Q. Bethlehem had a certain plant in 1916?

A. Yes.

Q. And Bethlehem had already its own plans for the enlargement of that plant?

A. Yes.

Q. And in the carrying out of those plans it expended items in 1917 and 1918 that you state you had; isn't that a fact?

A. Yes.

Q. Bethlehem did use those and its whole plant in constructing these particular ships?

A. Yes, of course.

Q. But the amount, however, which it had to expend in order to take these contracts and to carry them out, in addition to its previously planned plan was the $4,000,000 and the $672,000?

A. Yes, sir.

BY THE MASTER:

Q. So that we may be sure that we are both talking about the same thing, I am going back to the original question, which is this: that if Bethlehem had not already expended a total of $3,508,895.00 in its plant, in addition to the $4,825,000, it would have been necessary for the Fleet Corporation to spend that much in addition or Bethlehem to spend that much in addition to reach the total of plant facilities needed for these contracts?

A. That is right.

Q. And because that part of your capital investment for the war program was exclusively used for the Fleet Corporation's building and not available for other contracts, you have adopted that part of it as a part of your amortization total?

A. Yes, sir.

Q. As I remember Mr. Powell's testimony yesterday he said that in his estimate of the base cost he was figuring on an item of direct labor as the chief source for the saving, if any, which would be made in the performance under these contracts but that, since the contracts had been performed and the actual cost ascertained, he had not endeavored to determine whether the saving was in that item of direct labor or not, and I ask you, whether you are able to tell us, for the purposes of this

case, whether the saving, if any, was in the direct labor or in other items?

A. I am afraid that no one can tell. At the time the estimate was made, I will say November 1917, certain accounting was adopted by Fore River and the record on its books on the cost of a vessel was direct labor, direct material and expense. At that time Fore River undoubtedly was following a plan of operation in its plant. It might or it might not run through what we chose to call manufacturing orders upon which it would make a stock of, we will say, life boats. If we built these life boats and charged them directly to the ship the charge was lodged against the ship as material, labor and expense. If, on the other hand, we built these life boats in groups, for a group of ships, and carried them in inventory, when the lifeboats were charged to that ship they would be charged as material only. Now, subsequent to November, 1917, Bethlehem adopted a quite different manufacturing procedure than it theretofore followed, because some of its plants were peculiarly adapted to do certain kinds of work and it did the work for all of the plants. For instance our Moore plant built marine auxiliaries and carried them in inventory. Previously we might either have bought such auxiliaries from outside and charged them to 253, say, as material, or we might have built them at Fore River and charged it to material, labor and expense, but, as we subsequently did, we might have our Moore plant build marine auxiliaries for all of the yards and charge them as material. But I am sorry the records today would not permit of a determination where the savings were made.

Q. Then, as I understand it, although the tabulation which you have made or will make for the

purposes of the record as I have indicated to counsel I think should be made, will show the amount of savings, if any, on each of the contracts, you cannot break that down to indicate where the saving came from?

A. I am sorry we cannot. We can do it only in total.

Q. And that is largely due to the differences in accounting and the methods of distinguishing between direct labor and materials generally along the lines as you have indicated?

A. That is right.

MR. WOOD: I understand that it has been agreed that all stipulations by counsel as contained in the record of the previous proceedings will be maintained, and obviously they ought to be directed to the Master's attention and offered of record here. So that I desire to have it appear on this record, as it did on the previous record at page 759:

"It is stipulated that Bethlehem's claim, after presentation to the Emergency Fleet Corporation, was disallowed by the Shipping Board on its behalf and on behalf of the Fleet Corporation, and notice of that fact was given to Bethlehem before the bringing of this suit."

I understand that stipulation applies here?

MR. HALLETT: Yes.

MR. EVANS: I desire at this time to offer in evidence the memorandum which appears at page 494 of the Documentary Evidence, as Exhibit B-6.

An extract from the proceedings of the Board of Trustees of the Shipping Board, which appears at 579, as Exhibit B-7.

A letter at page 329 of the Documentary Evidence, as B-13.

Telegram dated March 19, 1918, at page 343, as Exhibit B-14.

The letter at page 196, as B-15.

A letter at page 198 as B-16.

A letter at page 443 as B-17.

A letter at page 464 as B-18.

A letter at page 468 as B-19.

Letter at page 473 as B-20.

The letter beginning on page 504 as B-23.

Page 507 as B-24.

Page 509 as B-25.

Page 510 as B-26.

Page 511 as B-27.

Page 231 as B-36.

Page 271, the telegram on that page as B-37.

Bethlehem Rests

THE MASTER: At the request of the Master counsel for the Government states that it may be conceded as a fact that the contract with the American Shipbuilding Corporation was the only then outstanding contract that was completely revised and a new contract made as a result of the letter from Mr. Charles M. Schwab to Mr. Hurley.

(Recess from 1 o'clock to 2:15 o'clock p. m.)

EVIDENCE ON BEHALF OF GOVERNMENT
(Continued)

GEORGE STANLEY RADFORD, having been duly sworn, was examined and testified as follows:

BY MR. BROWN:

Q. Where do you reside?

A. New Canaan, Connecticut.

Q. You are a graduate of Annapolis?

A. Yes, sir.

Q. Will you tell us briefly your shipbuilding experience subsequent to the time that you left Annapolis until you joined the Fleet Corporation?

A. I graduated from the Naval Academy in 1903 and then took a post graduate course in the Massachusetts Institute of Technology. After that I served in various capacities in the construction corps of the Navy and until 1915 when I resigned. The last four and a half years of that duty were on the staff of the Chief Constructor in Washington, in charge of contract legal and controversial matters.

Q. Subsequent to that time you joined the Fleet Corporation, did you not?

A. Not immediately. After I resigned I was engaged in munition work for the first two and a half years of the war and I was called to the Emergency Fleet Corporation by Admiral Capps and Admiral Bowles in the Summer of 1917.

Q. That would be about August, 1917?

A. About that time.

Q. How long were you with the Fleet Corporation?

A. I was with them until the following March.

Q. Do you remember the exact date when you left the service of the Fleet Corporation?

A. March 1st.

Q. And in what capacity or capacities did you serve with the Fleet Corporation while you were there?

A. For practically the entire time, excepting for the first two weeks or so when I was getting acquainted with the work, I was manager of the Contract Division.

Q. What were the functions of the Contract Division during the months of November and December, 1917?

A. I had no written instructions. I think, to make that clear, I should say that I was not a contracting officer. I had not the power to make contracts. I did act as an intermediary between the bidders for ship construction and for new ship yards and such matters on the one hand and the Fleet Corporation on the other, and having brought about, as nearly as possible, a meeting of the minds, I would then reduce that usually to writing and make a recommendation which usually led to a contract, or if I definitely recommended against it stop further proceedings.

Q. Did your duties relate primarily to ship construction or also to shipyards?

A. New yards, in connection with ships and some other matters.

Q. There were a great many new yards being organized during that period?

A. Several.

Q. And which had during 1916 and 1917 organized?

A. 1917 and 1918.

Q. There were many new yards?

A. The latter part of 1917.

Q. And, as I understand it, it was the function of your department primarily to see that the ship construction was expedited, was it not? Can we put it generally that way?

A. Well I would say that time was of the essence of the whole undertaking.

Q. And when I say expedited I mean it was the function of your department to see that ship construction was started; is that what you have in mind?

A. Well, I considered that the most important job I had really was to bring about as soon as possible the starting of all possible ships.

Q. In other words, ships were very urgently required during that period?

A. I believe that is a matter of common knowledge.

Q. In a general way, will you describe to the Master the conditions that prevailed in the contract department, with a special reference to the month of December, 1917, with respect to the amount of work which you had on hand, and how your days were occupied?

A. It is a rather difficult thing to describe that situation as it occurred unless you saw it. I think, in a few words, in general terms, the best thing to say about it is that we were trying to do in just a few months or weeks what ordinarily would have been done over a period of many years. There was no organization to speak of. When I was put in charge of the Contract Department, there was no organization to speak of, and I do not want to make that any reflection on my predecessors in office, because they had done a very good job, and the best

they could. As a matter of fact, we had an office about half the size of this, two or three stenographers, and when I went down there I had no further assistants, no technical assistants. Afterwards I had two or three men, only one of whom had had any shipyard or shipbuilding experience and we were just deluged by applications, both in writing and orally, so that I found myself in a position requiring that I have no appointments for two days a week. I was not always able to live up to that, and I am merely going into this detail to give you an idea what the situation was. I had appointments arranged by telegram and telephone which lasted from 15 minutes to all day long.

Q. And those appointments would be with persons in connection with the proposed construction of ships?

A. Mainly. People who either were shipbuilders, wanted to be shipbuilders, or who were coming in offering their services as possible shipbuilders and various negotiations that arose leading up to the contracts.

Q. And it was your function to interview these persons, as I understand it, with a view to determining what the Fleet should undertake in the way of ship construction; is that correct?

A. Yes.

Q. And working out the matters in controversy?

A. The first was a rough selection between propositions that looked as though they would result in ships and those that we could obviously see we were not going to get anywhere on, and those that we had to turn down we did as diplomatically as possible and that took time, and the rest were negotiations leading up to the making of ship contracts.

Q. At any rate, as I understand it, at that time it is a fair statement to say that your days were split up into intervals of short duration with a great number of different persons; is that correct?

A. Yes.

Q. What were the activities of Admiral Bowles' department at that time, the department of construction, in a general way?

A. Well, Admiral Bowles was manager of the division of steel ship construction, a department which had to do with the approval of plans for ships and estimates and all other matters in connection with the negotiation of the contracts. In other words, after a contract had been brought about and passed on by the Legal Department it was turned over to Admiral Bowles for execution insofar as the Fleet Corporation was concerned.

Q. And was the Admiral at that time, do you remember, also engaged in other activities such as Hog Island, possibly, and other projects of that sort?

A. Well the Fleet Corporation had two or three agency contracts. The operation, from the Fleet Corporation side, of course, was handled on the ground by Fleet representatives, but, in general, Admiral Bowles was in charge.

Q. When you refer to agency contracts, just what is exactly meant by that?

A. I mean in that case the Government employed, under various conditions, an organization to act as its agent in directing shipyards and building ships. They were on such a large basis that private shipbuilders would not be ordinarily interested.

Q. And included, among other things, the construction of yards in which the ships were to be built?

A. Quite right.

Q. And the Admiral, as I understand it, was also supervising that work?

A. In general.

Q. In other words, is it a fair statement that the Admiral, as well as yourself, were very much occupied with the various activities of the Fleet Corporation at that time?

A. In all respective departments.

Q. And, with respect to your particular department, were you going through the throes of organization also at that time, as I understand it?

A. Yes, sir. For some reason or other it was quite difficult to get people to come in to that work.

Q. You mean to assist you in connection with it?

A. Yes.

Q. You knew, did you not, that Mr. Piez had had no previous shipbuilding experience? That is already in the record, but I mean you knew about it at that time, did you not?

A. I knew he had had no close contacts with it.

Q. You knew that he had been connected with the Link Belt Company?

A. I knew he was president of the Link Belt Company.

Q. And what would you say with respect to Mr. Piez's activities at that time? Was he very busy himself?

A. Let me generalize and say that I don't believe I have ever seen any group of men more busy than the Fleet Corporation organization.

Q. And it would be a fair statement to make, would it not, that Mr. Piez necessarily relied on his subordinates with respect to such detailed or technical matters as construction cost with respect to ships?

A. Oh, I am sure that he would do so.

Q. Well he would necessarily do so, would he not?

A. Yes, sir.

Q. And with respect to those Bethlehem contracts which are in controversy, as I understand it, you and Admiral Bowles really had charge of the negotiation of those contracts on behalf of the Fleet Corporation at that time, did you not?

A. Yes.

Q. Will you describe in a general way the usual course of dealing at that time with respect to negotiations of contracts between the Fleet Corporation and shipbuilders?

A. Well, the full procedure began with the submission of a proposal to build ships and that document usually came directly or indirectly to my department, and it should, of course, in all cases, and was then subject to sufficient analysis to break it down. In other words, if there was no shipyard to take the complete case the Department of Docks had to make an investigation as to the site proposed; the Financial Department had to make an investigation as to the capacity of the ship contractor to carry out the obligations to be incurred; if there was any difficulty connected with the type of ship, Admiral Bowles's department of steel ship construction would pass on the availability of the plan, and then having reports from all these departments it was up to me to bring them into line as far as possible with the Fleet Corporation's policy. Now where we knew there was a shipyard existing where the people were known to know their business a part of those details were very obviously wiped out.

Q. Was it customary at that time to make any

analytical study of prices submitted by the shipbuilders, either with respect to lump-sum contracts or otherwise?

A. I made none.

Q. What would you say about the usual course of business that prevailed?

A. Well the usual course of business was based on the going prices at the time for that particular type of ship involved. For example, I knew that cargo carriers, the prices ranged from $160 to $180 a ton during that period depending upon the type of vessel and it was simply a question of negotiating on the market. I had absolutely no facilities nor staff and no time to carry out detailed cost investigations and I don't know that I considered it necessary in any case.

Q. And to put it another way, can you remember any instances during your employment by the Fleet Corporation in which you made any analytical study of costs submitted, after the shipbuilder had submitted it?

A. I did not.

Q. And you cannot remember one instance in which that was done?

A. If you remember that I am reaching back a long time in my memory, but it is my belief that nothing of the sort was done. I know I didn't do it, if that is the point you want to bring out.

Q. You can say, can you not, if such a thing was done it would be an exceptional instance?

A. Oh, yes, and if it had been done in any important case I think it would have been brought to my attention.

Q. And, as I understand it therefore, you made no such analysis with respect to the estimates sub-

mitted by Bethlehem with respect to these ships in controversy?

A. I did not.

Q. Do you know of any analysis that was made by any other member of the Fleet Corporation?

A. I do not.

Q. Do you remember their ever having made that with respect to a consideration of the prices submitted by Bethlehem, you personally?

A. I remember that I considered them in the course of business and in discussing with both the shipbuilders and with Admiral Bowles, representing the Fleet, but, if you are asking in a different form the same question, which I take it you are, I didn't make any analysis of them.

Q. You made no analysis whatsoever?

A. No.

Q. And, as I understand it, you were not in a position to make any such analysis at that time; is that correct?

A. That is correct.

Q. And was there any data available, insofar as you know, to the Fleet Corporation, which would have enabled you to make a careful detailed analysis of such costs, or was it possible to make such analysis at that time if such data had been available?

A. You are asking a number of questions there all together. I had access to no such data and had no data of my own.

Q. Do you know of any such data available?

A. I did not.

Q. Insofar as you know, there was no such data?

A. No.

Q. If by any possibility a check had been made, a careful analytical check of Bethlehem's figures,

for some special reason or otherwise, in the ordinary course of routine business, would it not have been also likely that a report with respect to that check would have been submitted to you as instead of the contract division?

A. I don't very well see how I could have helped knowing about it. I think they would have shown it to me.

Q. And no such report ever was made?

A. I saw no such report.

Q. And you never knew of any such report?

A. No.

Q. What was your primary concern with respect to the construction of the ships? I am referring to what you were particularly interested in in connection with these ships?

A. Well you probably know, and it is common knowledge, I think, that at that time pressure for ships was savage. The submarine sinkings were greatly in excess of any previous ship production in our country. We were very much concerned in getting certain types of ships which were quite difficult to build, and I cannot say that I blame the ship contractor at all for not wanting to build them, but we were anxious to get that particular type of ship which was one of the first things that was of interest, and the second thing was to get them just as soon as we could, and if I can carry on sufficiently there to clarify the point a bit, I regarded the contract as an authority to proceed at once with the construction of the ships, details to be ironed out later, and time was the great thing in every move we made and had to be.

Q. Right on that subject of the tankers, what was Bethlehem's attitude with respect to the construc-

tion of tankers? I think you have already implied it in your answer.

A. I have in my previous testimony at any rate stated that they were reluctant to engage in that more difficult construction.

Q. What kind of ships did they want to build?

A. Well, such capacity as was available I presume. What they said was cargo vessels as far as we were concerned, as far as possible.

Q. What would you say with respect to the construction of troop ships, as to the comparative difficulty of such construction as compared with the other type of ship and the length of time that it would take to build them?

A. There was greater difficulty involved in this case because there were a number of unknown factors, as I recall it, to be ironed out in connection with construction.

Q. It was a considerably more complicated type of ship, was it not?

A. Presumably.

Q. And would presumably take a great deal longer to build, would it not?

A. I believe so, in that case.

Cross Examination

BY MR. EVANS:

Q. The reason Bethlehem gave for preferring to build cargo ships rather than tankers was that they were afraid that disorganizations might result in their yards from undertaking that more difficult type of work such as was represented by tankers?

A. Yes.

Q. And by the disorganization you mean exactly what?

A. Well I don't know what they meant but I presume what they meant was the general fear expressed by experienced shipbuilders at the time, mainly in the riveting. The riveting of tankers is more difficult, with a great deal of work going on, to get up a force of 100 per cent thoroughly skilled riveters, was a very difficult situation.

Q. In other words the question of getting adequate skilled labor in shipyards was a very live question at that time?

A. In any war plant.

Q. And that applies, of course, to shipyards?

A. Everything.

Q. And what Bethlehem was afraid of was if the Fleet Corporation loaded them up with tankers and troop ships, which are ships that do require skilled labor, that they were not going to be able to get enough skilled labor to carry out the program and that would disorganize their yards?

A. My recollection is that they told us that they expected considerable difficulty in building up a staff to carry out that program.

Q. That is the reason they said they would rather have cargoes?

A. I presume so.

Q. In your testimony before Mr. Roberts in this proceeding you said that you fully realized at the time that conditions were going to change beyond anybody's wildest imagination. Do you recall making that statement?

A. Yes.

Q. You do recall making that statement?

A. Yes, I recall stating to that effect.

Q. And that is a fact, isn't it?

A. Yes.

May I elaborate a bit and say that I had been through at that time several years of war contract work and I knew that it was impossible to plan ahead and tell what was going to eventually happen.

Q. And that being the situation in which you and other people were working it was impossible for anyone to approximate with any reasonable degree of accuracy what it would cost to construct a large number of ships the construction of which were to extend over the period of the war? Isn't that a fair statement?

A. Why, I don't think it would be possible to make an exact computation, or a very exact, if you want to put it that way. It would be in general terms.

Q. You would have to make liberal allowances one way or the other, according as you were an optimist or a pessimist, wouldn't you?

MR. BROWN: I think in fairness to the witness there is something else that might be there, and that is the basis of the calculation.

BY MR. EVANS:

Q. Will you answer that question? (Question repeated).

A. Yes.

Q. In other words, when Mr. Powell stated, as he did, in his letter of December 19th, as he had previously stated in his letter of December 13th, that it is impracticable to estimate within a reasonable percentage what will be the actual cost of construction, you realized that that was a perfectly reasonable statement to make at the time?

A. Well I thought it was a fair statement.

Q. You were asked in these proceedings before Mr. Roberts, by Government counsel:

"Q. And it is almost unnecessary I think to ask whether you had complete confidence in the integrity of Mr. Powell at that time?" and your answer was, "Absolutely, I still have." Do you recall that statement?

A. I remember and it is not quoted exactly as I said it. I remember. It is one of those little things that come up that you do remember. I remember not only that, and I still have.

Q. You still have.

A. And I still have.

Q. And that still applies today as well as it did on the date you were testifying before Mr. Roberts?

A. Yes, sir.

Q. Do you have any clear recollection of what transpired at the conference on January 3, 1918?

A. Well now, you will have to define what you mean by clear. I know there was a conference. I looked at records enough to see that and several people said I was there and I remember I was there with several people. I remember there was quite a disagreement on certain points and afterwards I wrote a memorandum to try to bring about action on the thing.

Q. What I really wanted to ask your attention to was this; do you recall that as a result of that conference the prices which were finally agreed upon for these ships were substantially less than the prices which Mr. Powell had submitted in his proposal of December 19th?

A. I remember that there was a modification downward of some of the estimated prices which

were to form the profit sharing policy of the contract, but as to the amount of reduction, or whether they were substantial or not I don't remember. I must say again my interest in the conference was mainly on the subject of getting some ships underway and how soon they would be built and what assurance we would be given in the way of definite delivery dates so we might plan our program, and that is the phase that I remember with the greatest distinctness.

Q. Yes, and I think you told us so the last time, and I think you also told us that such bargaining as was done on the matter of price was done by Admiral Bowles and not by yourself?

A. It represented his opinion more than it did mine. I realized that there would be adjustment of one sort or the other afterwards of necessity.

Q. But you do recall that the result of that meeting was that there was some reduction in the price originally submitted?

A. Oh yes.

Q. Is your recollection of the meeting clear enough to tell us by what process the reduction was arrived at?

A. No, I am sorry I cannot recall the details of that phase of it.

Q. Do you recall that Admiral Bowles objected to the prices which had originally been submitted by Mr. Powell?

A. I thought I had said so before.

Q. Then you do recall it?

A. I recall that Admiral Bowles considered the prices high.

Q. And so stated to Mr. Powell?

A. Well I presume he must have but I cannot

recall having heard Admiral Bowles say that particular thing to Mr. Powell nor that H. G. Smith was in the room and I am not sure that Mr. Brown was there and other people from time to time. That might easily have occurred but I don't recall all the details of the discussion.

Q. You made some reference to Mr. H. G. Smith. Is it your recollection that he was at that meeting?

A. I don't remember that he was at the time. I say he might have been.

Q. Nobody else had said he was at the meeting and that is why I asked you?

A. I am merely saying that to indicate that I cannot recall details of that sort.

Q. At any rate you do recall that Admiral Bowles expressed it as his opinion that the prices which Mr. Powell had submitted were too high?

A. Yes.

Q. And as a result of that there was some process of bargaining, wasn't there, by which the prices were ultimately reduced?

A. I remember there were reductions in the estimated price.

Q. And after the prices had been reduced essentially the bargain was closed on the basis of the prices so reduced?

A. Well, the contract was entered into.

Q. Well it was not actually entered into but I mean it was closed so far as the verbal negotiations were concerned and that was followed by a recommendation signed by you and Admiral Bowles?

A. I see what you mean. As far as I was concerned the thing was settled. It went out of our department to the Legal Division where the contract was drawn.

Q. So far as you and Admiral Bowles were concerned you were satisfied with the agreement which had been arrived at at that meeting?

A. No. We were satisfied we had gotten the best agreement that we could and that we were in a position to make a representation to General Management of the Fleet Corporation that would lead to a contract. I would just as soon modify what I said about not being satisfied. I was not satisfied because I had no definite information about when we were going to get these ships and I had to have it in order to make up any sort of a schedule to have any real program.

Q. You were not satisfied on the delivery dates?

A. I was not satisfied on the point of definiteness, if you want to put it that way.

Q. The definiteness of the delivery dates?

A. Yes.

Q. But, as a result of the negotiations which took place between Admiral Bowles and Mr. Powell at that conference, your understanding was that the base prices had been definitely agreed upon?

A. Yes.

Q. So far as you and Admiral Bowles were concerned?

A. Well we were in a position where we said to the management we want to go through with this thing and we won't go any further with it and we are not warranted in doing so in view of the national emergency.

Q. And those prices which were agreed upon at that meeting were the result of barter and trade?

A. I think that is a fair statement. I don't know what other basis they could be put on.

BY THE MASTER:

Q. In a memorandum of January 5, 1918, which was two days after this conference at which you reached a figure which was the best to be obtained from Bethlehem, you joined in a recommendation to the management of the Fleet Corporation, as I understand it, that the terms that were outlined at the January 3rd conference be accepted and that Mr. Piez sign the letter that accompanied your memorandum?

A. That was the paper I referred to just a few moments ago. In order to bring about action on this thing I dictated that memorandum and put it before Admiral Bowles and he said I believe you are entirely right and signed it. I am reaching back quite a ways but that is my recollection, and I endeavored in that to state his feeling as well as my own.

Q. In the memorandum you stated that while the prices we have agreed to with representatives of Bethlehem Shipbuilding Corporation, are not satisfactory to us, nevertheless they represent a material reduction in the prices quoted by that corporation. I gather from what you said a few minutes earlier that it was Admiral Bowles who was more dissatisfied with the prices than you?

A. He was principally interested in the matter of cost and I think there is a natural explanation for it and the different attitude that we would have individually on the situation. Now my feeling, as I explained somewhat briefly a little while ago to Mr. Brown was just this, that I was there to act as an intermediary to bring the shipbuilders sufficiently close to the Fleet Corporation management to start some ships building and the sooner the quicker. I

might say, too, just to make that clear, that I had been in this war work since the very beginning. I was in the rifle business for two and a half years, and I knew about this three shift operation on war schedules and I knew how desperately important any time element was, and I also knew that we could not foresee all these things, and I felt this way, that if the Government did intend to offset the whole structure of the contractors they, as a party to the contract, would be in duty bound to compensate them for it. So there was that protection in the estimate. If, on the other hand, we made a contract through some accident or other that sent prices crazy, that legislation was already in the offing in the form of war profit taxes and what not, to take care of extreme cases of that sort; I hope that answers your question. If not I will be glad to elaborate on it.

Q. It answers it perfectly along that line. Further than that, however, I should like to ask you whether between the meeting of January 3rd and January 5th, when Admiral Bowles was presented by you with this memorandum, he had discussed with you the prices that he had objected to and which he still objected to?

A. I recollect no discussion with Admiral Bowles on the manner of prices except his bald statement that he considered the prices too high.

Q. Did he at any time tell you, either before the meeting of January 3rd, after he received the proposal of December 19, 1917, to the time when this memorandum was signed by him for Mr. Piez, what he thought the proper price should be?

A. No, not that I recall.

Q. Do you recall any discussions with Admiral Bowles during the early part of January after you

were committed to this contract that indicated what he thought was the excess between the fair price, as he would fix it, and the price that had been agreed upon?

A. No, sir, I recall nothing of that sort. Admiral Bowles, if you knew him at all, was a man of rather few words. He made up his mind, usually quite correctly, and expressed himself quite clearly and briefly and he considered further discussions superfluous in most cases. We had a great many things to do and we did not go into the thing in very great detail.

Q. On the other hand, you and Admiral Bowles had the responsibility between you, for the Fleet Corporation, of recommending a price for the ships that were being contracted for, didn't you?

A. Yes, we had to recommend in specific instances. As a matter of fact only in certain instances did Admiral Bowles enter into it. I had the duty myself in ordinary cases. Of course this Bethlehem tonnage was very large and I was only too happy to have his judgment injected, but in ordinary cases the responsibility was mine to make recommendation as to prices and other conditions.

Q. You spoke a little while ago of relying, so far as your own judgment was concerned, upon what you called the going price of such vessels, as a base at least, for your conclusions?

A. Yes, the market at the time.

Q. Now, did you attempt to ascertain what the market at the time was for the ships that were covered by the Bethlehem contract?

A. At that time I knew, and, of course, had to know, in general terms, what ships of a similar character, insofar as we had had any market de-

veloped, were contracted for, making allowances for the fact that some of them were on lump sum contracts with very definite dates of delivery, which was a consideration we had been quite glad to pay additional sum for short delivery, prompt delivery, of course.

Q. With that knowledge, did you for yourself at least, regardless of what Admiral Bowles may have thought, determine what was a fair average on the market price for these boats as contrasted with the price suggested and finally agreed upon with Bethlehem?

A. I may in my mind, of course, must have made a comparison between the Bethlehem offerings and contracts of others for similar vessels, or offers for similar vessels. Is that the answer you want?

Q. If you will also follow that with a statement as to what in percentages you believed the differential was?

A. I don't recall those figures today but I do remember this much about it, that I was not so much concerned by any manner of means as Admiral Bowles was on that question of cost.

Q. Was that because that you felt that the differential between the figure which you regarded as a fair going market price and the figure which was finally agreed upon with Bethlehem was not so substantial that it made any real difference?

A. That may have entered into it, but I don't think it was that, however, so much as my feeling that there were many other things more important, such as, for example, getting that transaction off the books, work started and ships under construction.

Q. Did the fact that Bethlehem was agreeing to

undertake to build the kind of ship it was difficult to get anybody else to build enter into that situation?

A. By all means. These ships were very much more interesting to us than a like number of cargo vessels. We eventually did get other shipbuilders to build the same ships, you know.

Q. Did you at that time have in mind the fact that it was in a letter from Mr. Powell dated December 13th, 1917, that the type of contract that was being suggested as the base included as the basis of this estimated cost a reasonable liability of earning, after the payment of Federal and excess profits taxes sufficient to net Bethlehem 10 per cent.?

A. I don't recollect just at the moment. Perhaps I would if I looked at the letter.

Q. Well it is only the fact that that was an element in the figures?

A. Well I don't think I am quite clear on that question. I would like very much to answer it if I can.

Q. The letter I have reference to is Government Exhibit 104 and I think it is rather important for us to get cleared up what was in the minds of you and Admiral Bowles if we can. Just look at that letter. It will help get to you what my question is directed to.

A. Well, I knew that he made the statement, of course, in that letter.

Q. Did Admiral Bowles discuss with you at all in preparing for this meeting of January 3rd the form of contract that carried with it a 50 per cent. saving clause?

A. No, but that goes back quite a little into Fleet Corporation history. I don't want to burden you with too much detail but I want to make it clear.

There were a number of contracts of various forms, namely the cost plus basis had been entered into by Admiral Capp's program when he became manager of the Fleet Corporation and brought in with him, of course, Admiral Lowles. Admiral Capps was very much opposed to anything in the form of cost plus contract, and not only cancelled everything in the way of negotiations on at the moment, but on the theory that it was going to result in great dis-organization of the shipyards, and it did in the Fleet's well organized yards, he wanted to get everything on a lump-sum basis and as definite as possible. Where we had to make exceptions for one reason or the other the endeavor was made to get away from the unlimited cost plus basis and we did the next best thing where we could; we made it cost plus a fixed fee which took out some of the sting, that is of the danger of dis-organization. I am not referring to anything that might be sinister in its implication at all but I simply mean it is an exceedingly difficult thing in war time to keep the shipyards for other organizations lined up when they know it is on the cost plus basis. So we might make if a cost plus a fixed fee in one instance and then when we had to go one step further to a certain extent we made it a profit sharing feature. I was working in my own mind with a method of exceptions. We started out with a form of contract and a policy that would be satisfactory for every case and then on specific cases made such exceptions as the circumstances indicated.

Q. The form of contract that was adopted with Bethlehem was therefore what you would regard as a development from the other types of contract as the Fleet policy?

A. It was a compromise really and a very good form of contract; cost plus a fixed fee and profit sharing contract in theory at least is reasonable.

Q. And in dealing with other shipbuilders after that form of contract had been adopted, was it used with anybody else than Bethlehem?

A. I will revert again to what we were just discussing. If anybody came in there the first attempt was to get them on a lump-sum basis and then to back up step by step towards that form of contract if we were forced to do so. You see the important thing was to get everything as definite as possible.

Q. Now, of course, on the other hand, so that I may get the policy of the Fleet in my mind, it was not the intention of Admiral Bowles or yourself, in negotiating these contracts with any of the shipbuilders, to do so on a basis that would deprive them of a reasonable, fair profit, and destroy the incentive to do proper work?

A. Oh, quite the contrary. I think the attitude throughout was not to put it on a trading basis but to realize that all the incentive possible should be given.

Q. I gather from what you told us concerning the lack of any detail discussion, that Admiral Bowles did not discuss with you fully, during the conference of January 3rd, just what his estimated saving was, did he?

A. No, not that I remember. It may have occurred.

Q. Do you recall whether at any time either you or Admiral Bowles did discuss with a representative of Bethlehem what was the estimated amount of the saving on the base price?

A. No, sir, I am quite sure I did not. I don't

think it would have occurred to me at the time, in view of the other circumstances.

Q. One other question and that is whether or not you knew at the time of the agreement reached on January 3rd of a letter of that date which Mr. Powell had delivered to Mr. Charles Piez whereby he indicated his willingness to leave the matter of price in the contract to Mr. Piez in the event that Admiral Bowles and he were unable to reach an agreement?

A. I remember the letter because I was shown the original two or three years ago. I remember it quite clearly. I am very certain that I had not seen that letter until the date which I initialed on the bottom of it, and I am sorry that I don't recall that date, but I would not have written the memorandum which you referred to a short time ago if I had known of the existence of that letter. That is quite unreasonable to think that that would have happened and that probably clears the point for you. Now when I saw the original letter, of course it was one of dozens of letters on the different work at the time, and all I did was that I was quite careful to initial and put the date on any important paper that came before me, and when the original was handed to me two or three years ago I looked for that and found the date was some days afterwards and I think it was about the 11th.

Q. That was about how long after January 5, 1918, that you saw that letter, do you suppose?

A. I think the date I saw it was about the 11th. The original ought to be around here somewhere and you will find on it the stamp and the initials.

Q. Your best recollection, as I understand it, is that that letter came through to you in the ordinary course of routine business?

A. Considerably later.

Q. And probably about January 11, 1918, is your recollection?

A. Yes, sir.

Q. After you did see that letter did you take up with Admiral Bowles or with Mr. Charles Piez a suggestion that the price had been fixed that the base price for these contracts be revised before any start of the work was undertaken?

A. No, sir. I can answer that question in the negative for the reason that it would have been contrary to my own feeling what was a proper policy for the Fleet Corporation. The object of the Fleet Corporation was not to put the Government into shipbuilding as a big shipbuilder but it was to spread out the job and decentralize it as much as possible, and I would have personally objected on the theory of the thing to anything that would say, "Now you go do this way we say you are to do it."

Q. You would have preferred to have taken the chance on recommending something more than might be regarded as giving a reasonable profit in order to get the work going on a large scale by Bethlehem?

A. Well, and to leave us out of the picture as having ordered them how they were to do a thing and under what conditions. We wanted to give them the job of producing certain ships and the only influence that letter would have had on me would be to cut out the word "arbitrary" in that memorandum. That is one of the things that you dictate in the busy day and it comes back to bite you ten years afterwards.

Q. Just because it has been discussed here by several of the witnesses as, I suppose, an indication of the fact that the dealings were distinctly at

arm's length between Bethlehem, through Mr. Powell, and the Fleet Corporation, through Admiral Bowles, I am going to ask you whether or not there was any indication in what Admiral Bowles said to you or anything that he said in your presence to others, that showed an attitude personally toward Mr. Powell that was other than that of the fair, confidential relationship and friendly attitude?

A. Well, now, is it in order to indulge in rather a free statement?

Q. Yes, unless counsel objects to it, because I think that it has become a matter of some consideration.

A. I don't know if you know of my relations with these gentlemen or not. We were all pretty much in one family in the shipbuilding game before the war. Mr. Powell, Admiral Bowles and myself were in the same corps in the Navy, and, as a matter of fact, my first duty after I left Boston Tech was Assistant Superintendent Constructor at the Fore River works for the Bethlehem Company and Mr. Brown here and I had many a discussion and still remained friends. They are all friends of mine, if that is understood to begin with, and, as far as Admiral Bowles is concerned I worshipped the ground that he walked on and miss him tremendously today. Admiral Bowles—I dare not start saying anything about him for fear that I may say so many things that I would like about what a wonderful man he was—Admiral Bowles often gave the impression of feeling very strongly about something that did not really concern him at all. In other words, he was a man who was utterly without fear and without reticence, when it seemed important, to say what he felt was so. I might even go on and say I know of

no hard feelings, as far as he was concerned, or I would not be in a position to know about the other people, but so far as he was concerned I know of no bitterness in that situation.

Q. Toward Mr. Powell?

A. No, or anybody else in connection with it. Now the only man in the Bethlehem organization as it happened that I overheard Admiral Bowles say anything about was the man who was at the head of it and I heard him say that he liked him very much, while he frequently disagreed with him.

Q. That was Mr. Schwab?

A. Yes. I am afraid I cannot help you very much on this gossip. I know there were a number of people who one time and another said that Admiral Bowles and so and so were enemies. Well what I have tried at some length to say in vindication of a very dear friend, is that you had to know the man and know the situation in order to form a just judgment of what that thing meant. I don't think that his judgment would be biased, to boil it down and crystallize it, on anything. Admiral Bowles was working for one purpose in Washington and with everything he had in him, and that was for the United States.

Q. And, therefore, I assume from what you have said that in dealing with Mr. Powell, representing on the one hand the Bethlehem, and Admiral Bowles, representing the United States on the other, Admiral Bowles was endeavoring to make the best agreement that he could under the circumstances?

A. Yes, and in my opinion impersonally.

MR. HALLETT: I desire to offer some further Exhibits, I first offer Exhibit formally offered as G-189.

THE MASTER: These will be admitted and given the same exhibit numbers unless there is some objection.

MR. HALLETT: I also offer the following as physical exhibits, formally offered as G-190, G-191, G-192.

I offer from this book headed labor cost, direct labor cost, direct labor hours (plus bonus overtime), as Exhibit G-210, which may be taken out of the book and photostated and offered as such, this relating to the Union plant.

Oral Testimony Closed.

THE MASTER: It is agreed by counsel, and consented to by the Master, that counsel may have the privilege of examining the Exhibits and the record of the previous trial and in the event that it is necessary to accompany the Exhibits now in the trial before me by an explanation given at the previous trial, or required here; the explanation made be read into this record with the same force and effect as if made here and now.

It is also agreed to and consented to by the Master that if upon an examination of the record at this trial either counsel desire to offer,

as additional exhibits, before the Master, any of the Exhibits offered at the previous trial and not offered already in this record, they may have the privilege of doing so, and, upon notice to the Master, they will be incorporated in the record.

In order that counsel may have an opportunity of calling the attention of the Master to any inaccuracies in the transcript of the oral testimony, and to submit additional exhibits, if any, the Master will hear counsel at such day in the future as they may agree upon, after they have an opportunity to examine the record, upon such corrections as they may desire to have made and to receive such exhibits as they may desire to offer, if any. If there is any time limit that counsel desire to put down we will put it now or otherwise the Master will assume that counsel will do it as rapidly as possible in order that the record at least may be complete on which to start the basis for the consideration by the Master.

It is agreed that requests for findings of fact and conclusions of law, together with briefs, will be filed with the Master by both parties on or before May 15, 1931, unless the time is further extended.

Meeting held at the office of the Special Master and Referee, William Clarke Mason, Esq., 2107 Fidelity-Philadelphia Building, 123 South Broad Street, Philadelphia, on Monday, May 11, 1931, at 3:30 p. m. D. S. T.

Present:

William Clarke Mason, Esq., Special Master and Referee.

Joseph J. Brown, Esq., for the Government and for United States Shipping Board Emergency Fleet Corporation.

Ralph B. Evans, Esq., for Bethlehem Companies.

It is stipulated between counsel for Bethlehem and counsel for Emergency Fleet Corporation and the Government that with respect to all of the contracts involved, a complete audit of the total cost of the vessels included in the respective contracts and of the revised estimated cost thereof, was made by the Emergency Fleet Corporation and the said audit was completed on or about the 1st day of September, 1922.

MR EVANS: I offer in evidence Paragraph 207 of the statement of claim in the case of Bethlehem Shipbuilding Corporation, Ltd., against the United States Shipping Board Emergency Fleet Corporation (No. 11970), reading as follows:

"Two Hundred Seventh: The plaintiff completed said six equipments and said six sets of spares in accordance with the terms and provisions of said contract and said plans and specifications and delivered the same complete to the defendant f. o. b. cars, as provided in Section 2 of Article I of said contract, on or before the first day of February, 1921. The plaintiff duly performed all the terms and con-

ditions of said contract on its part to be performed and the defendant took possession of and accepted said equipments and said spares as constructed in accordance with said plans and specifications and the terms and conditions of said contract."

In connection with that offer I offer the corresponding paragraph of the affidavit of defense, but only for the purpose of showing that the averments of the statement of claim are not denied:

"Two Hundred and Seventh. In answer to Paragraph Two Hundred and Seventh of the Statement of Claim, defendant avers that it took possession of and accepted said equipments and spares upon behalf of its said principal."

I also offer Paragraph 210 of the statement of claim in the same case, as follows:

"Two Hundred Tenth: After the termination of said agreement of lease, in the latter part of the year 1919, the defendant, in accordance with the terms thereof, removed said barracks and on or about the 29th day of March, 1920, entered into an agreement with the plaintiff whereby the plaintiff agreed to provide for the restoration of said land and the defendant agreed to reimburse the plaintiff for the cost thereof. In accordance with said agreement, and at the direction and with the approval of the defendant, the plaintiff procured the restoration of said land to its original condition at a total cost to the plaintiff of two thousand five hundred and seventy dollars ($2,570)."

Paragraph 210 is admitted without qualification in the affidavit of defense.

I offer also Paragraph 211 of the statement of claim in the same case, as follows:

"Two Hundred Eleventh: Upon the restoration of said land to its original condition as aforesaid, there became due from the defendant to the plaintiff the sum of two thousand five hundred and seventy dollars ($2,570), no part of which has been paid, although duly demanded, which sum is now due and owing to the plaintiff from the defendant, with interest thereon from the first day of June, 1920."

I offer Paragraph 211 of the affidavit of defense, but only for the purpose of showing that the averments of the corresponding paragraph of the statement of claim are not denied;

"Two Hundred and Eleventh. In answer to Paragraph Two Hundred and Eleventh of the Statement of Claim, defendant admits that plaintiff is entitled to a credit in the said amount of $2,570.00 against the balance owing by it to defendant upon the causes of action hereinafter set forth in defendant's Set-Off and Counterclaim. Defendant avers that the agreements referred to in plaintiff's Twentieth Cause of Action were made by defendant upon behalf of its principal, the United States of America."

THE MASTER: There being no objection, the offers are all admitted.

MR. BROWN: I offer in evidence as Exhibit G-176 the pamphlet showing the prices agreed

upon between the War Industries Board and the steel manufacturers, together with the comments in reference thereto appearing at pages 163 and 164 of the previous record, as follows:

"Mr. Brown: Now, if it is agreeable to counsel for Bethlehem, I would like to offer certain statements issued by the Committee on Public Information during 1917 and 1918 relating to the fixation of prices on certain iron and steel products under an agreement or agreements between the War Industries Board and certain steel manufacturers, including the Bethlehem Steel Corporation and its affiliated concerns.

Mr. Evans: There will be no objection to that."

I offer in evidence for this record so much of the testimony of the witness H. G. Smith as was offered before the former Master, appearing upon the record at pages 319 and 320 and relating to Exhibit G-168, as follows:

"Henry Gerrish Smith, having been duly sworn, was examined and testified as follows:

By Mr. Brown:

Q. Mr. Smith, what is your connection with the Bethlehem Shipbuilding Corporation?

A. I am a vice-president of the Bethlehem Shipbuilding Corporation.

Mr. Brown: I suppose there is no objection to my calling Mr. Smith for cross examination.

By Mr. Brown:

Q. Mr. Smith, will you tell us whether the document which I show you is a copy of the document which was signed by you upon behalf

of the Bethlehem Shipbuilding Corporation and by A. N. Lisson upon behalf of the Emergency Fleet Corporation, to the best of your recollection?

A. It is.

Mr. Brown: I would like to have that marked for identification.

Mr. Roberts: Marked G-168 for identification.

By Mr. Brown:

Q. Mr. Smith, will you tell me whether this document marked as Exhibit G-168 sets forth the accounting and cost procedure adopted and followed by Bethlehem Shipbuilding Corporation during the period of ship construction under the contracts in controversy?

A. It sets forth in a general way the method in vogue at the time.

Q. During the period covered by the work done for the Fleet Corporation?

A. Yes.

Q. By the Bethlehem Shipbuilding Corporation and its subsidiaries; is that correct?

A. Yes.

Q. And it likewise, as I understand it, in a general way sets forth the accounting methods which were in force among the Bethlehem subsidiaries and the Bethlehem Steel Corporation during the period of 1917 up until the organization of the Bethlehem Shipbuilding Corporation; is that correct?

A. Well, it sets forth—

Q. Do I make clear the question? Were the methods set forth in this exhibit substantially

similar to the methods in force among the Bethlehem Companies prior to the organization of the Bethlehem Shipbuilding Corporation?

A. Yes.

Mr. Brown: I offer that document in evidence.

Mr. Evans: No objection.

Mr. Roberts: It is admitted as G-168."

MR. BROWN: I would like to offer Exhibits G-199 to G-202 inclusive, which were offered at the last proceeding, which were, I think, the contracts with the other shipbuilders.

I would like to offer the admission in explanation of the American Shipbuilding contract which has been offered in evidence as Exhibit G-196 and which appears at pages 884 and 885 of the previous record, as follows:

"Mr. Brown: We offer one of the contracts between the American Shipbuilding Company and the Emergency Fleet Corporation, which is referred to in the revised contract between the American Shipbuilding Corporation and the Fleet Corporation, which has been offered in evidence as Exhibit B-8, and which it is conceded is similar in form to all of the original contracts between the American Shipbuilding Company and the Emergency Fleet Corporation, differing only with respect to the number of ships and the amount of the purchase price stated in each contract.

Mr. Hallett: And delivery dates.

Mr. Brown: And the delivery dates.

Mr. Roberts: Received as G-196."

If there is no objection, I would like to have it admitted of record that Exhibit G-6 was furnished to Government counsel by Bethlehem counsel during August, 1927.

It is stipulated between counsel for Bethlehem and counsel for the Emergency Fleet Corporation that Bethlehem Shipbuilding Corporation, Ltd., is a corporation organized and existing under the laws of the State of Delaware, and that the United States Shipping Board Emergency Fleet Corporation is a corporation organized pursuant to Section 11 of the Act of Congress approved September 7, 1916, known as the Shipping Act 1916; that it is a corporation existing under and by virtue of the laws of the District of Columbia.

Counsel and the Master, having gone over the record of the testimony, have submitted certain corrections, most of them typographical, which it is agreed are to be made in the several copies of the testimony to complete the record in proper form.

The Master notified counsel that an extension of time would be granted for the filing of briefs until June 1st, at which time counsel can exchange briefs and file them with the Master.

TESTIMONY BEFORE OWEN J. ROBERTS, ESQ., REFEREE

IN THE DISTRICT COURT OF THE UNITED STATES

For the Eastern District of Pennsylvania

No. 3315 March Sessions, 1925

In Equity

The United States of America,
Complainant,

v.

Bethlehem Steel Corporation; Bethlehem Shipbuilding Corporation, Ltd; Bethlehem Steel Company; Fore River Shipbuilding Corporation; and Union Iron Works Company,
Defendants.

No. 11970 December Sessions, 1925

At Law

Bethlehem Shipbuilding Corporation, Ltd.

v.

The United States Shipping Board Emergency Fleet Corporation

(Pages 606-610, inclusive, as per Stipulation of Contents of Record on Appeal)

Q. Mr. Powell, in a volume reporting Hearings before the Cominittee on Commerce, United States

Senate Sixty-fifth Congress, Second Session on Senate Resolution 170, directing the Committee on Commerce to investigate all matters connected with the building of merchant vessels under the direction of the United States Shipping Board Emergency Fleet Corporation and report its findings to the Senate, together with its recommendations thereon, it appears that you testified before that Committee on February 1st, 1918. Is that correct? Did you so testify?

A. Yes.

MR. BROWN: I will ask to have this volume marked for identification.

MR. ROBERTS: It is marked G-185 for identification.

BY MR. BROWN:

Q. It appears at pages 1395 and 1396 of this volume that you testified as follows with respect to the contracts of December 6th, 1917 which had been entered into between the Bethlehem Shipbuilding Corporation and the Navy: "Mr. Powell. We agree with the Navy Department that under the conditions under which these ships are to be built, we will take a type ship that would cost a million and a half dollars. The Navy Department says to you, 'We will pay you $135,000 for building that ship, no matter what she costs, but if you do build her for less than a million and a half, we will give you half of what you save under that million and a half, in addition to your $135,000.' In other words, if we can build her for a million and three hundred thousand dollars, the Government saves $100,000 and we get $100,000 for saving the $200,000.

SENATOR VARDAMAN: But you still get the premium?

MR. POWELL: It is not a premium, it is a fee; it is the same as the lawyer's fee for taking care of his client, or the doctor's fee for taking care of his patient.

SENATOR VARDAMAN: In the estimates you make, you estimate that that is about the cost of the ship?

MR. POWELL: Yes, sir.

SENATOR VARDAMAN: With the labor and material at the price today?

MR. POWELL: Yes.

SENATOR VARDAMAN: But if it happens to go up, what then?

MR. POWELL: We take all the risk of the material. If the material goes up we simply lose our chance of making that extra stake.

SENATOR VARDAMAN: Then what is it that you do not take the risk of losing on?

MR. POWELL: We are not taking any risk on it, Senator. We are not taking any risk on it and on that amount of a fee no shipbuilder can afford to take a risk. If we have to build ships that cost a million and a half at $135,000, there is not any margin that will allow us to take a risk.

SENATOR VARDAMAN: Suppose you build that ship for a million and a half. Does not that give you a fair profit on that investment?

MR. POWELL: No, sir; we could not live on that basis.

SENATOR VARDAMAN: You could not?

MR. POWELL: No, sir.

SENATOR VARDAMAN: Could you give the Government a price for that ship?

MR. POWELL: If we gave you a price on the ship, we would want about $2,000,000 for it. In other words, if we took the risk instead of the Government, we would have to have at least that much additional money." Do you remember so testifying, and is that testimony a correct statement of the situation with respect to the Navy contracts?

A. I have no doubt I so testified. I remember very well appearing before the Committee.

Q. That testimony correctly describes the situation with respect to the Navy contracts?

A. I should say yes. It is just about in line with what I testified to previously, that the estimated costs might overrun fifty percent.

Q. Aside from the figures mentioned in that testimony, it would be equally applicable to the Fleet contracts, would it not?

A. May I see that testimony for a minute?

MR. BROWN: Yes, indeed.

BY MR. EVANS:

Q. Is that question clear to you, Mr. Powell?

A. That is why I wanted to see the testimony.

BY MR. BROWN:

Q. What I am asking you is, aside from the difference between the figures mentioned relating to

Navy contracts and the figures relating to the Fleet Corporation contracts, whether or not the balance of your testimony would be equally applicable in explaining the purposes of the Bethlehem contracts.

A. I should say in general we were working for the Emergency Fleet Corporation for a fee with an agreed-on price, and for one-half of the saving. So far as this explains that form of contract, what I said also applies to the form of contract with the Emergency Fleet.

Q. I ask you whether, aside from the differences in the figures between the Navy contracts and the Fleet contracts, the balance of your testimony is equally applicable with respect to the Fleet contracts.

A. I should say so, yes.

Q. In other words, as I understand you to testify, under both the Fleet and the Navy contracts the probable cost or base price was intended to be based upon wage rates and material costs existing at the time of the contracts? Is that correct?

A. Yes, with the definite understanding that it was going to be set to give us a chance to make a saving. That was understood by everybody in both the conferences with the Navy Department and the Fleet Corporation.

Q. And that saving was to be effected, was it not, by virtue of Bethlehem's ability to increase the efficiency of labor. In other words, to train them and stimulate them?

A. That was one item of a number on which we expected to effect savings.

Q. I suppose the other item was that you expected to be able to effect a great saving on your purchase of plates and shapes?

EXHIBIT A

STIPULATION OF FACTS

INDEX

	Page
Reservations (Par. 2)	2
Allocation of Costs, etc. (Par. 3)	3
Reservations (Par. 3-a)	4
Increased Wages under West Coast Contracts (Par. 4)	4
Increased Wages under East Coast Contracts (Par. 5)	7
Reservations (Par. 135)	75
Agreements growing out of Requisition (Par. 136)	75
Claim for Overtime Coefficient (Par. 138)	76
Amounts claimed on account of Overtime Coefficient and Overtime Bonus (Par. 139)	77
Unclaimed Straight Wages (Par. 314)	132
Unclaimed Retroactive Wages (Par. 315)	134
Massachusetts Soldiers' Bonus Tax (Par. 316)	136
Use of Stipulation (Par. 318)	137
Signatures	137
Contract No. 177 S. C.	9

Contract No. 178 S. C. 13
Contract No. 179 S. C. 19
Contract No. 182 S. C. 22
Contract No. 183 S. C. 24
Contract No. 184 S. C. 28
Contract No. 191 S. C. 32
Contract No. 196 S. C. 36
Contract No. 226 S. C. 39
Contract No. 230 S. C. 42
Contract No. 299 S. C. 46
Contract No. 300 S. C. 50
Contract No. 301 S. C. 53
Contract No. 312 S. C. 57
Contract No. 313 S. C. 58
Contract No. 314 S. C. 60
Contract No. 340 S. C. 63
Contract No. 465 S. C. 65

DISTRICT COURT OF THE UNITED STATES
Eastern District of Pennsylvania

The United States of America
Complainant,

against

Bethlehem Steel Corporation; Bethlehem Shipbuilding Corporation, Ltd.; Bethlehem Steel Company; Fore River Shipbuilding Corporation; and Union Iron Works Company,
Defendants.

In Equity, No. 3315 March Term, 1925

Bethlehem Shipbuilding Corporation, Ltd.,
Plaintiff,

against

United States Shipping Board Emergency Fleet Corporation,
Defendant.

At Law, No. 11970 December Sessions, 1925

STIPULATION OF FACTS

It is hereby stipulated and agreed by and between the parties to the above entitled causes, as follows:

1. The United States of America is herein called the Government; United States Shipping Board Emergency Fleet Corporation, the Fleet Corporation; Bethlehem Shipbuilding Corporation, Ltd., Bethlehem Ship; Fore River Shipbuilding Corporation, Fore River; Union Iron Works Company, Union.

2. Nothing in this stipulation shall prevent any party from introducing evidence not at variance with the facts stipulated herein with respect to matters relevant to the issues in said causes, whether any such matter is referred to in this stipulation or not. Nothing herein contained shall foreclose the Government or the Fleet Corporation from contending, either as a question of fact or of law or of mixed fact and law, that the acts, proceedings and under-

takings of the Fleet Corporation herein referred to or any of them were done, performed or entered into by it as agent of the Government, or foreclose Bethlehem Steel Corporation, Bethlehem Steel Company, Bethlehem Ship, Fore River or Union from contending that such acts, proceedings and undertakings or any of them were not done, performed or entered into by the Fleet Corporation as such agent.

3. In the case of each of the contracts hereinafter mentioned, numbered 177 S. C., 179 S. C., 182 S. C., 183 S. C., 184 S. C., 191 S. C., 230 S. C., 299 S. C., 300 S. C. and 465 S. C., the increase of the estimated cost, the costs incurred, the surplus materials and supplies delivered and the payments for and on account of the construction of the vessels, completed thereunder, as hereinafter stated, were caused, incurred, delivered or made, as the case may be, in equal portions on account of such vessels respectively. In the case of each of the contracts hereinafter mentioned, numbered 178 S. C., 226 S. C., 301 S. C. and 314 S. C., under each of which two types of vessels, viz.: tank vessels and cargo vessels, were constructed, the increase of the estimated cost, the costs incurred, the surplus materials and supplies delivered and the payments, for and on account of the vessels completed thereunder, as hereinafter stated, were caused, incurred, delivered or made, as the case may be, as between such two types of vessels in the following respective percentages of the respective totals thereof and, as between the vessels of the same type completed under each such contract, in equal portions of the respective amounts thereof so applicable to the total number of such vessels, to wit:

Exhibit A

Contract No.	*Number of each type of vessel constructed*	*Percentage of total applicable to such number and type of vessel*
#178 S. C.	3 tank	58%
	3 cargo	42%
#226 S. C.	4 tank	65%
	3 cargo	35%
#301 S. C.	6 tank	66%
	3 cargo	34%
#314 S. C.	3 tank	39%
	7 cargo	61%

3-a. The statements contained in this stipulation and particularly the references to revised estimated cost contained therein are made without prejudice to the contention of the Fleet Corporation and the Government that the provisions of Article XIX of the respective contracts concerning payment to Bethlehem Ship of one-half the difference between the revised estimated cost and the actual cost of the ships therein referred to are illegal and invalid.

Increased Wages Under the West Coast Contracts

4. Contracts numbered 177 S. C., 191 S. C., 230 S. C. and 301 S. C. hereinafter mentioned, covered the construction of vessels at the Union plant of Bethlehem Ship. Article XIX, except for the amounts of estimated costs and fixed fees therein specified, is the same in each of said contracts. On November 4, 1917, the Shipbuilding Labor Adjustment Board promulgated an award prescribing cer-

tain rules as to conditions of employment, including a schedule of minimum wages retroactive to September 22, 1917, applicable to the shipyards of the San Francisco Bay District. On November 24, 1917, the Fleet Corporation directed Bethlehem Ship immediately to put into effect at its Union plant, and Bethlehem Ship did thereupon put into effect at such plant, the schedule of wages so promulgated by said Adjustment Board. Pursuant to paragraph V of said award, the Fleet Corporation, on December 10, 1917, extended said schedule to ten additional crafts. On December 10, 1917, the Fleet Corporation transmitted to Bethlehem Ship the following statement:

STATEMENT SUBMITTED BY THE NAVY DEPARTMENT AND THE UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION

In order to provide a proper stimulus to increase the output of ships in the shipyards of the Pacific Coast, and in order to encourage men who live at great distances to leave their homes and enter on service in the shipyards, the United States Shipping Board Emergency Fleet Corporation will pay to all employees of shipyards on the Pacific Coast, with the exception of those working under the Seattle agreement, a war service payment of ten per cent., effective on and after December 15, 1917, to all men who work for six consecutive days in any week a total of not less than 48 hours, provided that men prevented from working on account of the elements, physical condition or any unavoidable cause, will not be denied the benefits provided for under this statement. The payment to be computed on straight time at the minimum rate

provided in the award, and on February 1, 1918, a further stimulus to attract men to the shipbuilding industry will be provided by converting the above to a permanent increase of ten per cent. of the Adjustment Board rates, provided that nothing in this memorandum shall prevent a re-hearing of this matter by the Wage Adjustment Board. It is stipulated that for the purpose of such re-hearing the award of the Adjustment Board shall be considered as expiring at all Pacific coast plants six months from the date at which the award became effective in the Puget Sound District, that is, February 1, 1918.

December 8th, 1917.

(Signed) Franklin D. Roosevelt
" Charles Piez
" William Blackman
" J. A. Franklin
" James O'Connell
" John I. Nolan

On February 1, 1918, said war service payment of 10%, in accordance with said statement, dated December 8, 1917, became a permanent increase of 10% over the schedule of wages established by the award of said Adjustment Board, dated November 4, 1917, as so extended. There is dispute between the parties as to what is the schedule of wages referred to in Article XIX of each of said contracts. The contentions of Bethlehem Ship on the one hand and of the Fleet Corporation and the Government on the other hand with respect to said schedule, are as follows:

A. Bethlehem Ship contends that the schedule of wages referred to in Article XIX of each

said contract is the schedule so promulgated by said Adjustment Board on November 4, 1917, as extended to said ten additional crafts, but not including said war service payment as originally promulgated or as converted either in whole or in part. Such contention is hereinafter called Contention A.

B. The Fleet Corporation and the Government contend that the schedule of wages referred to in Article XIX of each said contract is the schedule so promulgated by said Adjustment Board as so extended, plus the war service payment of 10% as converted in accordance with the statement of December 8, 1917, into a general permanent increase effective on February 1, 1918. Such contention is hereinafter called Contention B.

C. In the alternative, Bethlehem Ship contends that if the schedule of wages referred to in Article XIX of each said contract includes said war service payment at all (which, however, it denies) said schedule of wages includes said war service payment only as promulgated in accordance with said statement dated December 8, 1917, before the flat increase of 10% was effected as of February 1, 1918. Such contention is hereinafter called Contention C.

Increased Wages Under the East Coast Contracts

5. Contracts numbered 178 S. C., 179 S. C., 183 S. C., 184 S. C., 196 S. C., 226 S. C., 299 S. C., 300 S.

C., 314 S. C. and 465 S. C., hereinafter mentioned, covered the construction of vessels at the Fore River, Moore, Harlan and Sparrows Point shipyards of Bethlehem Ship, hereinafter sometimes collectively referred to as the East Coast shipyards. With respect to the schedule of wages therein specified, Article XIX is the same in all of said contracts except as to the respective Navy Yards therein mentioned and with the further exception that in said contract 465 S. C. the wage board referred to is referred to as the Shipbuilding Labor Adjustment Board. In November and December, 1917, the Fleet Corporation authorized Bethlehem Ship to put into effect on the ships requisitioned by the United States at each of its four East Coast shipyards, the rates then prevailing at the respective Navy Yards nearest to such shipyard and on January 3, 1918, Bethlehem Ship actually had, in so far as was practicable, put into effect at each of its East Coast shipyards such rates. Thereafter, and on various dates, to wit, on February 14, 1918, for the Harlan and Sparrows Point shipyards; on March 1, 1918, again for the Sparrows Point shipyard; on April 6, 1918, for the Fore River and Moore shipyards, and on October 24, 1918, for all said four shipyards, the Shipbuilding Labor Adjustment Board made awards increasing the rates of wages payable to labor engaged in ship construction at said shipyards. Pursuant to said awards, the Fleet Corporation, beginning with the award of February 14, 1918, from time to time directed Bethlehem Ship to increase, and in accordance with such directions Bethlehem Ship did thereupon so increase, the rates of wages paid to its workmen. There is dispute between the parties as to what is the schedule of wages referred to in said Article XIX of each of said contracts. The contentions of Bethlehem Ship

on the one hand and of the Fleet Corporation and the Government on the other are as follows:

D. Bethlehem Ship contends that the schedule of wages referred to in Article XIX of each said contract is the schedule of wages in force on January 3, 1918, at the Navy Yard therein specified. Such contention is hereinafter called Contention D.

E. The Fleet Corporation and the Government contend that the language of Article XIX of each said contract is so uncertain, indefinite and conflicting that it is impossible to say what schedule is meant thereby and that the increased labor cost incurred by Bethlehem Ship cannot be ascertained in accordance therewith. The Fleet Corporation and the Government concede, however, that this contention does not apply to the amount of increased wages paid by Bethlehem Ship to its subcontractors at the direction of the Fleet Corporation, for the reason that such increases were over and above definite and certain schedules of wages being paid by subcontractors before the increases were ordered by the Fleet Corporation. Said contention is hereinafter called Contention E.

F. In the alternative, the Fleet Corporation and the Government contend that if the schedule of wages referred to in Article XIX of each said contract can be identified at all, it is the schedule of wages in effect after said awards of the Shipbuilding Labor Adjustment Board, dated February 14, 1918, for the Harlan and Sparrows Point shipyards and April 6, 1918, for

the Fore River and Moore Shipyards. Such contention is hereinafter called Contention F.

West Coast Contract No. 177 S. C.

(Bethlehem Ship's First Cause of Action)

6. Under date of December 31, 1917, a contract, known as Contract No. 177 S. C., covering the construction at the Union plant of twelve steel tank vessels, was executed and delivered, a copy of which contract, subject to correction upon comparison with the original thereof, is Exhibit 5 annexed to the answer of Bethlehem Ship on file in the suit first above entitled and Exhibit 1-A annexed to the statement in the action second above entitled.

7. Under date of April 25, 1918, an agreement supplemental to Contract No. 177 S. C., was executed and delivered, a copy of which, subject to correction upon comparison with the original thereof, is Exhibit 23 annexed to said answer of Bethlehem Ship and Exhibit 1-B annexed to said statement. Under date of July 17, 1918, a letter was transmitted to and received by Bethlehem Ship, a copy of which, subject to correction upon comparison with the original thereof, is Exhibit 24 annexed to said answer of Bethlehem Ship and Exhibit 1-C annexed to said statement.

8. Bethlehem Ship completed and delivered said twelve steel tank vessels with the changes mentioned in paragraph 13 hereof in accordance with the terms and provisions of said contract No. 177 S. C., and provided the special improvements, tools and equipment covered by Article XXIII thereof as modified

by said agreement dated April 25, 1918, and the facilities covered by said letter dated July 17, 1918, in accordance with the terms and provisions of said Article XXVIII as so modified and said letter.

9. After the completion and delivery by Bethlehem Ship of said vessels an audit of the total cost of said vessels and of the revised estimated cost thereof as provided in Article XIX of said contract and of the cost of said special improvements, tools and equipment and facilities was made by the Fleet Corporation.

10. The Fleet Corporation and the Government concede that items of actual cost within the definition of actual cost in Article XVII of said contract were incurred by Bethlehem Ship in the construction of said vessels amounting in the aggregate to $22,466,351.20

11. In addition to such conceded actual cost Bethlehem Ship asserts and claims herein as further actual cost alleged to have been incurred by it in the construction of and on account of said vessels the respective portions hereinafter mentioned of the items of cost set forth in paragraphs 314 and 315 of this stipulation, viz.:

Portion of unclaimed straight wages set forth in paragraph 314 hereof	$2,400.00
Portion of unclaimed retroactive wages set forth in paragraph 315 hereof	492.65

The Fleet Corporation and the Government concede that, subject to the terms of said paragraphs 314 and 315, the aforesaid apportionment is arithmetically correct as applicable to said vessels.

12. The Fleet Corporation and the Government concede that in accordance with the terms and provisions of Article XXVIII of said contract No. 177 S. C., as modified as in paragraph 7 hereof stated, and of said letter dated July 17, 1918, Bethlehem Ship incurred in the construction and providing of the special improvements, tools, equipment and facilities covered thereby items of cost aggregating $1,550,000.00

Bethlehem Ship's statement of the cost incurred by it in the construction and providing of said special improvements, tools, equipments and facilities showing the portions of such cost incurred with respect to the various parts thereof amounting in the aggregate to $1,550,533.68 is annexed to this stipulation and marked Exhibit A. Bethlehem Ship, however, does not claim that it became entitled to be paid on account of the construction and providing of said special improvements, tools, equipments and facilities in excess of said amount of $1,550,000 of cost conceded to have been incurred by it as above stated.

13. The difference between the revised estimated cost of said vessels and the total actual cost thereof (subject to modification as hereinafter stated) is

On Contention A, (Bethlehem Ship's Contention), described in paragraph 4 hereof.

Estimated cost specified in Article XIX of said contract	$25,440,000.00
Increased labor cost	2,394,570.96

Conceded net cost of changes and extras	60,495.28
Revised Estimated Cost	$27,895,066.24
Deduct conceded actual cost (i. e. $22,466,351.20) reduced by value of surplus materials and supplies (i. e. $53,859.63)	$22,412,491.57
Difference	$ 5,482,574.67

On Contention B, (Contention of the Fleet Corporation and the Government) described in paragraph 4 hereof.

Estimated cost specified in Article XIX of said contract	$25,440,000.00
Increased labor cost	1,572,938.47
Conceded net cost of changes and extras	60,495.28
Revised Estimated Cost	$27,073,433.75
Deduct conceded actual cost (i. e. $22,466,351.20) reduced by value of surplus materials and supplies (i. e. $53,859.63)	22,412,491.57
Difference	$ 4,660,942.18

On Contention C, (Bethlehem Ship's Alternative Contention) described in paragraph 4 hereof.

Estimated cost specified in Article XIX of said contract	$25,440,000.00
Increased labor cost	1,983,754.71
Conceded net cost of changes and extras	$ 60,495.28
Revised Estimated Cost	$27,484,249.99
Deduct conceded actual cost (i. e. $22,466,351.20) reduced by value of surplus materials and supplies (i. e. $53,859.63)	22,412,491.57
Difference	$ 5,071,758.42

The amount of cost used in each of the foregoing computations is to be increased, and the amount of "Difference" decreased, in the event and to the extent that additional items of cost referred to in paragraph 11 hereof shall be found to be proper items of cost.

14. The Fleet Corporation has paid to Bethlehem Ship on account of

the actual cost of said vessels	$22,792,960.96
fixed fees specified in said contract	2,268,000.00
the difference between the actual cost of said vessels and the revised estimated cost thereof	1,980,242.43
Total on account of said vessels	$27,041,203.39
said special improvements, tools and equipment	1,549,848.68

East Coast Contract No. 178 S. C.

(Bethlehem Ship's Second Cause of Action)

15. Under date of December 31, 1917, a contract, known as Contract No. 178 S. C., covering the construction at the Harlan plant of three steel tank vessels and three cargo vessels, was executed and delivered, a copy of which contract, subject to correction upon comparison with the original thereof, is Exhibit 6 annexed to the answer of Bethlehem Ship on file in the suit first above entitled and Exhibit 2-A annexed to the statement in the action second above entitled.

16. Under date of June 20, 1918, an agreement supplemental to Contract No. 178 S. C., was executed and delivered, a copy of which, subject to correction upon comparison with the original thereof, is Exhibit 28 annexed to said answer of Bethlehem Ship and Exhibit 2-B annexed to said statement.

17. Bethlehem Ship completed and delivered said three steel tank vessels and said three cargo vessels with the changes mentioned in paragraph 22 hereof in accordance with the terms and provisions of said contract No. 178 S. C., and constructed and provided the extensions, tools, equipment and installations covered by Article XXVIII of said contract as modified by said agreement dated June 20, 1918, in accordance with the terms and provisions of said Article XXVIII as so modified.

18. After the completion and delivery by Bethlehem Ship of said vessels an audit of the total cost of said vessels and of the cost of said special improvements, tools, equipment and installations was

made by the Fleet Corporation. In connection with such audit the Fleet Corporation also determined the net cost of changes and extras in and upon said vessels and the amount of the increase in labor cost by reason of increases in the rates of wages paid by Bethlehem Ship by the direction of or with the approval of the Fleet Corporation over the schedule of wages in effect at the Navy Yard of the United States at Philadelphia, Pennsylvania, on January 3, 1918, and over the schedule of wages promulgated by the Shipbuilding Labor Adjustment Board under date of February 14, 1918. The Fleet Corporation contends, however, that for the reasons stated in subdivision Marked E of paragraph 5 hereof it is not possible to determine any amount by which the estimated cost of said vesesls was to be increased because of such increases in labor cost under the provisions of Article XIX of said contract.

19. The Fleet Corporation and the Government concede that items of actual cost within the definition of actual cost in Article XVII of said contract were incurred by Bethlehem Ship in the construction of said vessels amounting in the aggregate to $9,792,015.63

20. In addition to such conceded actual cost Bethlehem Ship asserts and claims herein as further actual cost alleged to have been incurred by it in the construction of and on account of said vessels the following amount of cost incurred in removing and rebuilding parts of said vessels and the portion hereinafter mentioned of the item of cost set forth in paragraph 314 of this stipulation, viz:

Cost incurred in removing and rebuilding certain tanks and other parts of said vessels	$199,049.07
Portion of unclaimed straight wages set forth in paragraph 314 hereof	2,310.56

The Fleet Corporation and the Government concede that said amount of cost of removing and rebuilding was incurred, but deny that said cost of removing and rebuilding, either in whole or in part, is a proper item of actual cost within the definition of actual cost contained in Article XVII of said contract for the reason that said cost of removing and rebuilding was incurred in connection with work condemned by the Fleet Corporation. The Fleet Corporation and the Government further concede that, subject to the terms of said paragraph 314 of this stipulation, the aforesaid apportionment of unclaimed wages referred to in said paragraph 314 is arithmetically correct as applicable to said vessels.

21. The Fleet Corporation and the Government concede that in accordance with the terms and provisions of Article XXVIII of said contract No. 178 S. C., as modified as in paragraph 16 hereof stated, Bethlehem Ship incurred in the construction and providing of the extensions, tools, equipment and installations covered thereby items of cost aggregating $141,000.00

Bethlehem Ship's statement of the cost incurred by it in the construction and providing of said extensions, tools, equipments and insfallations showing the portions of such cost incurred with respect to

the various parts thereof amounting in the aggregate to $189,452.35 is annexed to this stipulation and marked Exhibit B. Bethlehem Ship, however, does not claim that it became entitled to be paid on account of the construction and providing of such extensions, tools, equipments and installations in excess of said amount of $141,000 of cost conceded to have been incurred by it as above stated.

22. The difference between the revised estimated cost of said vessels and the total actual cost thereof (subject to modification as hereinafter stated) is

On Contenti D, (Bethlehem Ship's Contention) described in paragraph 5 hereof.		
Estimated cost specified in Article XIX of said contract	$ 8,886,000.00	
Increased labor cost	$ 1,331,183.17	
Conceded net cost of changes and extras	188,959.00	
Revised Estimated Cost		$10,406,142.17
Deduct conceded actual cost (i. e. $9,792,015.63) reduced by value of surplus materials and supplies (i. e. $34,452.84)		9,757,562.79
Difference		$ 648,579.38
On Contention E, (Contention of the Fleet Corporation and the Government) described in paragraph 5 hereof.		

Estimated cost specified in Article XIX of said contract	$ 8,886,000.00
Increased labor cost paid to subcontractors	5,220.04
Conceded net cost of changes and extras	188,959.00
Revised Estimated Cost	$ 9,080,179.04
Deduct conceded actual cost (i. e. $9,792,015.63) reduced by value of surplus materials and supplies (i. e. $34,452.84)	9,757,562.79
Difference (no savings)	

On Contention F, (Alternative Contention of the Fleet Corporation and the Government) described in paragraph 5 hereof.	
Estimated cost specified in Article XIX of said contract	$ 8,886,000.00
Increased labor cost	415,530.84
Conceded net cost of changes and extras	188,959.00
Revised Estimated Cost	$ 9,490,489.84
Deduct conceded actual cost (i. e. $9,792,015.63) reduced by value of surplus materials and supplies (i. e. $34,452.84)	9,757,562.79
Difference (no savings)	

The amount of cost used in each of the foregoing computations is to be increased, and the amount of "Difference" decreased, in the event and to the extent that additional items of cost referred to in paragraph 20 hereof shall be found to be proper items of cost.

23. The Fleet Corporation has paid to Bethlehem Ship on account of

the actual cost of said vessels	$ 9,803,700.22
fixed fees specified in said contract	769,500.00
the difference between the actual cost of said vessels and the revised estimated cost thereof	113,610.02
Total on account of said vessels	$10,686,810.24
said special improvements, tools and equipment	140,711.02

East Coast Contract No. 179 S. C.

(Bethlehem Ship's Third Cause of Action)

24. Under date of December 31, 1917, a contract, known as Contract No. 179 S. C., covering the construction at the Sparrows Point plant of three steel tank vessels, was executed and delivered, a copy of which contract, subject to correction upon comparison with the original thereof, is Exhibit 7 annexed to the answer of Bethlehem Ship on file in the suit first above entitled and Exhibit 3 annexed to the statement in the action second above entitled.

25. Bethlehem Ship completed and delivered said three steel tank vessels with the changes mentioned

in paragraph 28 hereof in accordance with the terms and provisions of said contract.

26. After the completion and delivery by Bethlehem Ship of said vessels an audit of the total cost of said vessels was made by the Fleet Corporation. In connection with such audit the Fleet Corporation also determined the net cost of changes and extras in and upon said vessels and the amount of the increase in labor cost by reason of increases in the rates of wages paid by Bethlehem Ship by the direction of or with the approval of the Fleet Corporation over the schedule of wages in effect at the Navy Yard of the United States at Norfolk, Virginia, on January 3, 1918, and over the schedule of wages promulgated by the Shipbuilding Labor Adjustment Board under date of February 14, 1918. The Fleet Corporation contends, however, that for the reasons stated in subdivision marked E of paragraph 5 hereof it is not possible to determine any amount by which the estimated cost of said vessels was to be increased because of such increases in labor cost under the provisions of Article XIX of said contract.

27. The Fleet Corporation and the Government concede that items of actual cost within the definition of actual cost in Article XVII of said contract were incurred by Bethlehem Ship in the construction of said vessels amounting in the aggregate to $5,556,330.41

28. The difference between the revised estimated cost of said vessels and the total actual cost thereof is

On Contention D, (Bethlehem Ship's Contention) described in para-

graph 5 hereof.	
Estimated cost specified in Article XIX of said contract	$6,210,000.00
Increased labor cost	851,436.38
Conceded net cost of changes and extras	24,328.00
Revised Estimated Cost	$7,085,764.38
Deduct conceded actual cost (i. e. $5,556,330.41) reduced by value of surplus materials and supplies (i. e, $3,785.34)	5,552,545.07
Difference	$1,533,219.31

On Contention E, (Contention of the Fleet Corporation and the Government) described in paragraph 5 hereof.	
Estimated cost specified in Article XIX of said contract	$6,210,000.00
Increased labor cost paid to subcontractors	$ 1,069.69
Conceded net cost of changes and extras	24,328.00
Revised Estimated Cost	$6,235,397.69
Deduct conceded actual cost (i. e. $5,556,330.41) reduced by value of surplus materials and supplies (i. e. $3,785.34)	5,552,545.07
Difference	$ 682,852.62

On Contention F, (Contention of the Fleet Corporation and the Government) described in paragraph 5 hereof.	
Estimated cost specified in Article XIX of said contract	$6,210,000.00
Increased labor cost	243,927.50
Conceded net cost of changes and extras	24,328.00
Revised Estimated Cost	$6,478,255.50
Deduct conceded actual cost (i. e. $5,556,330.41) reduced by value of surplus materials and supplies (i. e. $3,785.34)	5,552,545.07
Difference	$ 925,710.43

29. The Fleet Corporation has paid to Bethlehem Ship on account of

the actual cost of said vessels	$5,657,186.58
fixed fees specified in said contract	539,998.90
the difference between the actual cost of said vessels and the revised estimated cost thereof	515,223.37
Total	$6,712,408.85

East Coast Contract No. 182 S. C.

(Bethlehem Ship's Fourth Cause of Action)

30. Under date of December 31, 1917, a contract, known as Contract No. 182 S. C., covering the con-

struction at the Sparrows Point plant of two troop ships, was executed and delivered, a copy of which contract, subject to correction upon comparison with the original thereof, is Exhibit 8 annexed to the answer of Bethlehem Ship on file in the suit first above entitled and Exhibit 4 annexed to the statement in the action second above entitled. Said executed contract was delivered by the Fleet Corporation to Bethlehem Ship prior to February 15, 1918. Said contract was made pursuant to letters which had passed between Bethlehem Ship and the Fleet Corporation on the respective dates thereof, copies of which marked Exhibits E and F are annexed hereto.

31. Thereafter, at the direction of the Fleet Corporation and with the consent of Bethlehem Ship, the plans and specifications for said vessels were so changed as to provide for the construction under said contract of two combined passenger and cargo vessels instead of two troop ships.

32. Bethlehem Ship completed and delivered said two passenger and cargo vessels in accordance with the terms and provisions of said contract and with said changed plans and specifications.

33. After the completion and delivery by Bethlehem Ship of said vessels an audit of the total cost of said vessels was made by the Fleet Corporation.

34. The Fleet Corporation and the Government concede that items of actual cost within the definition of actual cost in Article XVII of said contract were incurred by Bethlehem Ship in the construction of said vessels amounting in the aggregate to $11,348,258.26

35. In addition to such conceded actual cost Bethlehem Ship asserts and claims herein as further actual cost incurred by it in the construction of and on account of said vessels the following amount of royalty paid by it to Redington Standard Fittings Company on account of Curtis turbine engines installed in said vessels; the Fleet Corporation and the Government concede that said amount of royalty was so paid as so asserted and claimed, but deny that said amount of royalty, either in whole or in part, is a proper item of actual cost within the definition of actual cost contained in Article XVII of said contract, viz.:

Amount of royalty paid on account of Curtis turbines in excess of the amount thereof included in the cost conceded in paragraph 34 hereof	$ 6,000.00

36. The amount of the cost of said vessels is for the purpose of determining profit thereon, to be reduced by the value of the surplus materials and supplies, viz.: $152,598.37

37. The Fleet Corporation has paid to Bethlehem Ship on account of

the actual cost of said vessels	$11,495,435.22
10% of cost for profit as specified in said contract	800,000.00
Total	$12,295,435.22

East Coast Contract No. 183 S. C.

(Bethlehem Ship's Fifth Cause of Action)

38. Under date of December 31, 1917, a contract, known as Contract No. 183 S. C., covering the construction at the Fore River plant of three steel tank vessels, was executed and delivered, a copy of which contract, subject to correction upon comparison with the original thereof, is Exhibit 9 annexed to the answer of Bethlehem Ship on file in the suit first above entitled and Exhibit 5 annexed to the statement in the action second above entitled.

39. Bethlehem Ship completed and delivered said three steel tank vessels with the changes mentioned in paragraph 43 hereof in accordance with the terms and provisions of said contract.

40. After the completion and delivery by Bethlehem Ship of said vessels an audit of the total cost of said vessels was made by the Fleet Corporation. In connection with such audit the Fleet Corporation also determined the net cost of charges and extras in and upon said vessels and the amount of the increase in labor cost by reason of increases in the rates of wages paid by Bethlehem Ship by the direction of or with the approval of the Fleet Corporation over the schedule of wages in effect at the Navy Yard of the United States at Boston, Massachusetts, on January 3, 1918, and over the schedule of wages promulgated by the Shipbuilding Labor Adjustment Board under date of April 6, 1918. The Fleet Corporation contends, however, that for the reasons stated in subdivision marked E of paragraph 5 hereof it is not possible to determine any amount by which the estimated cost of said vessels was to be increased because of such increases in la-

bor cost under the provisions of Article XIX of said contract.

41. The Fleet Corporation and the Government concede that items of actual cost within the definition of actual cost in Article XVII of said contract were incurred by Bethlehem Ship in the construction of said vessels amounting in the aggregate to $5,307,830.87

42. In addition to such conceded actual cost Bethlehem Ship asserts and claims herein as further actual cost alleged to have been incurred by it in the construction of and on account of said vessels the respective portions hereinafter mentioned of the items of cost set forth in paragraphs 314 and 316 of this stipulation, viz.:

Portion of unclaimed straight wages set forth in paragraph 314 hereof	$3,605.09
Portion of Soldiers' Bonus Tax set forth in paragraph 316 hereof	3,012.70

The Fleet Corporation and the Government concede that, subject to the terms of said paragraphs 314 and 316, the aforesaid apportionment is arithmetically correct as applicable to said vessels.

43. The difference between the revised estimated cost of said vessels and the total actual cost thereof (subject to modification as hereinafter stated) is

On Contention D, Bethlehem Ship's Contention) described in paragraph 5 hereof.	
Estimated cost specified in Article XIX of said contract	$5,595,000.00
Increased labor cost	776,639.20

Conceded net deductions for changes and extras	12,791.00
Revised Estimated Cost	$6,358,848.20
Deduct conceded actual cost (i. e. $5,307,830.87) reduced by value of surplus materials and supplies (i. e. $19,965.44)	5,287,865.43
Difference	$1,070,982.77

On Contention E, (Contention of the Fleet Corporation and the Government) described in paragraph 5 hereof.

Estimated cost specified in Article XIX of said contract	$5,595,000.00
Increased labor cost	None
Conceded net deductions for changes and extras	12,791.00
Revised Estimated Cost	$5,582,209.00
Deduct conceded actual cost (i. e. $5,307,830.87) reduced by value of surplus materials and supplies (i. e. $19,965.44)	$5,287,865.43
Difference	$ 294,343.57

On Contention F, (Alternative Contention of the Fleet Corporation and the Government) described in paragraph 5 hereof.

Estimated cost specified in Article XIX of said contract	$5,595,000.00
Increased labor cost	371,666.99
Conceded net deductions for changes and extras	12,791.00
Revised Estimated Cost	$5,953,875.99
Deduct conceded actual cost (i. e. $5,307,830.87) reduced by value of surplus materials and supplies (i. e. $19,965.44)	$5,287,865.43
Difference	$ 666,010.56

The amount of cost used in each of the foregoing computations is to be increased, and the amount of "Difference" decreased, in the event and to the extent that additional items of cost referred to in paragraph 42 hereof shall be found to be proper items of cost.

44. The Fleet Corporation has paid to Bethlehem Ship on account of

the actual cost of said vessels	$5,368,867.81
fixed fees specified in said contract	499,500.00
the difference between the actual cost of said vessels and the revised estimated cost thereof	402,056.25
Total	$6,270,424.06

East Coast Contract No. 184 S. C.

45. Under date of December 31, 1917, a contract, known as Contract No. 184 S. C., covering the con-

struction at the Moore plant of six tug boats, afterward increased under the option in paragraph XXIX of said contract to the total number of twenty tug boats, was executed and delivered, a copy of which contract, subject to correction upon comparison with the original thereof is Exhibit 10 annexed to the answer of Bethlehem Ship on file in the suit first above entitled.

46. Bethlehem Ship completed and delivered said twenty tug boats with the changes mentioned in paragraph 50 hereof in accordance with the terms and provisions of said contract.

47. After the completion and delivery by Bethlehem Ship of said vessels an audit of the total cost of said vessels was made by the Fleet Corporation. In connection with such audit the Fleet Corporation also determined the net cost of changes and extras in and upon said vessels and the amount of the increase in labor cost by reason of increases in the rates of wages paid by Bethlehem Ship by the direction of or with the approval of the Fleet Corporation over the schedule of wages in effect at the Navy Yard of the United States at Brooklyn in the City of New York, on January 3, 1918, and over the schedule of wages promulgated by the Shipbuilding Labor Adjustment Board under date of April 6, 1918. The Fleet Corporation contends, however, that for the reasons stated in subdivision marked E of paragraph 5 hereof it is not possible to determine any amount by which the estimated cost of said vessels was to be increased because of such increases in labor cost under the provisions of Article XIX of said contract.

48. The Fleet Corporation and the Government concede that items of ae-

tual cost within the definition of actual cost in Article XVII of said contract were incurred by Bethlehem Ship in the construction of said vessels amounting in the aggregate to $6,140,519.13

49. In addition to such conceded actual cost Bethlehem Ship asserts and claims herein as further actual cost alleged to have been incurred by it in the construction of and on account of said vessels the portion hereinafter mentioned of the item of cost set forth in paragraph 314 of this stipulation, viz.:

Portion of unclaimed straight wages set forth in paragraph 314 hereof	$1,630.17

The Fleet Corporation and the Government concede that, subject to the terms of said paragraph 314, said apportionment is arithmetically correct as applicable to said vessels.

50. The difference between the revised estimated cost of said vessels and the total actual cost thereof (subject to modification as hereinafter stated) is

On Contention D, (Bethlehem Ship's Contention) described in paragraph 5 hereof.	
Estimated cost specified in Article XIX of said contract	$5,860,000.00
Increased labor cost	993,934.80
Conceded net cost of changes and extras	525,876.24
Revised Estimated Cost	$7,379,811.04
Deduct conceded actual cost (i. e. $6,140,519.13) reduced by value of	

surplus materials and supplies (i. e. $54,225.65)	6,086,293.48
Difference	$1,293,517.56

On Contention E, (Contention of the Fleet Corporation and the Government) described in paragraph 5 hereof.

Estimated cost specified in Article XIX of said contract	$5,860,000.00
Increased labor cost paid to sub-contractors	3,987.46
Conceded net cost of changes and extras	525,876.24
Revised Estimated Cost	$6,389,863.70
Deduct conceded actual cost (i. e. $6,140,519.13) reduced by value of surplus materials and supplies (i. e. $54,225.65)	$6,086,293.48
Difference	$ 303,570.22

On Contention F, (Alternative Contention of the Fleet Corporation and the Government) described in paragraph 5 hereof.

Estimated cost specified in Article XIX of said contract	$5,860,000.00
Increased labor cost	400,369.64
Conceded net cost of changes and extras	525,876.24
Revised Estimated Cost	$6,786,245.88

Deduct conceded actual cost (i. e. $6,140,519.13) reduced by value of surplus materials and supplies (i. e. $54,225.65)	6,086,293.48
Difference	699,952.40

The amount of cost used in each of the foregoing computations is to be increased, and the amount of "Difference" decreased, in the event and to the extent that the additional item of cost referred to in paragraph 49 hereof shall be found to be a proper item of cost.

51. The Fleet Corporation has paid to Bethlehem Ship on account of

the actual cost of said vessels	$6,543,048.69
fixed fees specified in said contract	656,909.92
the difference between the actual cost of said vessels and the revised estimated cost thereof	470,053.70
Total	$7,670,012.31

West Coast Contract No. 191 S. C.

(Bethlehem Ship's Sixth Cause of Action)

52. Under date of December 31, 1917, a contract, known as Contract No. 191 S. C., covering the construction at the Union plant of four steel cargo vessels, was executed and delivered, a copy of which contract, subject to correction upon comparison with the original thereof, is Exhibit 11 annexed to the answer of Bethlehem Ship on file in the suit first

above entitled and Exhibit 6 annexed to the statement in the action second above entitled. Said executed contract was delivered by the Fleet Corporation to Bethlehem Ship on February 21, 1918. Said contract was made pursuant to letters which had passed between the Fleet Corporation and Bethlehem Ship on the respective dates thereof, copies of which marked Exhibits G and H are annexed hereto.

53. Bethlehem Ship completed and delivered said four steel cargo vessels with the changes mentioned in paragraph 57 hereof in accordance with the terms and provisions of said contract.

54. After the completion and delivery by Bethlehem Ship of said vessels an audit of the total cost of said vessels and of the revised estimated cost thereof as provided in Article XIX of said contract was made by the Fleet Corporation.

55. The Fleet Corporation and the Government concede that items of actual cost within the definition of actual cost in Article XVII of said contract were incurred by Bethlehem Ship in the construction of said vessels amounting in the aggregate to $6,349,258.11

56. In addition to such conceded actual cost Bethlehem Ship asserts and claims herein as further actual cost alleged to have been incurred by it in the construction of and on account of said vessels the respective portions hereinafter mentioned of the items of cost set forth in paragraphs 314 and 315 of this stipulation, viz.:

Portion of unclaimed straight wages set forth in paragraph 314 hereof	$800.00

Portion of unclaimed retroactive wages set forth in paragraph 315 hereof	4,105.42

The Fleet Corporation and the Government concede that, subject to the terms of said paragraphs 314 and 315, the aforesaid apportionment is arithmetically correct as applicable to said vessels.

57. The difference between the revised estimated cost of said vessels and the total actual cost thereof (subject to modification as hereinafter stated) is

On Contention A, (Bethlehem Ship's Contention) described in paragraph 4 hereof.

Estimated cost specified in Article XIX of said contract	$8,514,000.00	
Increased labor cost	$418,304.45	
Conceded net cost of changes and extras	103,760.52	
Revised Estimated Cost		9,036,064.97
Deduct conceded actual cost (i. e. $6,349,258.11) reduced by value of surplus materials and supplies (i. e. $3,869.37)		6,345,388.74
Difference		$2,690,676.23

On Contention B, (Contention of the Fleet Corporation and the Government) described in paragraph 4 hereof.

Estimated cost specified in Article XIX of said contract	$8,514,000.00
Increased labor cost	145,190.56

Conceded net cost of changes and extras	103,760.52
Revised Estimated Cost	$8,762,951.08
Deduct conceded actual cost (i. e. $6,349,258.11) reduced by value of surplus materials and supplies (i. e. $3,869.37)	6,345,388.74
Difference	$2,417,562.34

On Contention C, (Bethlehem Ship's Alternative Contention) described in paragraph 4 hereof.	
Estimated cost specified in Article XIX of said contract	$8,514,000.00
Increased labor cost	281,747.51
Conceded net cost of changes and extras	103,760.52
Revised Estimated Cost	$8,899,508.03
Deduct conceded actual cost (i. e. $6,349,258.11) reduced by value of surplus materials and supplies (i. e. $3,869.37)	6,345,388.74
Difference	$2,554,119.29

The amount of cost used in each of the foregoing computations is to be increased, and the amount of "Difference" decreased, in the event and to the extent that additional items of cost referred to in paragraph 56 hereof shall be found to be proper items of cost.

58. The Fleet Corporation has paid to Bethlehem Ship on account of

the actual cost of said vessels	$6,405,741.11
fixed fees specified in said contract	766,260.00
the difference between the actual cost of said vessels and the revised estimated cost thereof	1,100,000.00
Total	$8,272,001.11

East Coast Contract No. 196 S. C.

(Bethlehem Ship's Seventh Cause of Action)

59. Under date of December 31, 1917, a contract, known as Contract No. 196 S. C., covering the construction at the Sparrows Point plant of one steel cargo vessel was executed and delivered, a copy of which contract, subject to correction upon comparison with the original thereof, is Exhibit 12 annexed to the answer of Bethlehem Ship on file in the suit first above entitled and Exhibit 7 annexed to the statement in the action second above entitled.

60. Bethlehem Ship completed and delivered said steel cargo vessel with the changes mentioned in paragraph 63 hereof in accordance with the terms and provisions of said contract.

61. After the completion and delivery by Bethlehem Ship of said vessel an audit of the total cost of said vessel was made by the Fleet Corporation. In connection with such audit the Fleet Corporation also determined the net cost of changes and extras in and upon said vessel and the amount of the increase in labor cost by reason of increases in the

rates of wages paid by Bethlehem Ship by the direction of or with the approval of the Fleet Corporation over the schedule of wages in effect at the Navy Yard of the United States at Norfolk, Virginia, on January 3, 1918, and over the schedule of wages promulgated by the Shipbuilding Labor Adjustment Board under date of February 14, 1918. The Fleet Corporation contends, however, that for the reasons stated in subdivision marked E of paragraph 5 hereof it is not possible to determine any amount by which the estimated cost of said vessel was to be increased because of such increases in labor cost under the provisions of Article XIX of said contract.

62. The Fleet Corporation and the Government concede that items of actual cost within the definition of actual cost in Article XVII of said contract were incurred by Bethlehem Ship in the construction of said vessel amounting in the aggregate to $1,123,782.08

63. The difference between the revised estimated cost of said vessel and the total actual cost thereof is

On Contention D, (Bethlehem Ship's Contention) described in paragraph 5 hereof.	
Estimated cost specified in Article XIX of said contract	$1,295,000.00
Increased labor cost	132,318.73
Conceded net cost of changes and extras	5,940.11
Revised Estimated Cost	$1,433,258.84

Deduct conceded actual cost	1,123,782.08
Difference	$ 309,476.76

On Contention E, (Contention of the Fleet Corporation and the Government) described in paragraph 5 hereof.

Estimated cost specified in Article XIX of said contract	$1,295,000.00
Increased labor cost paid to subcontractors	317.50
Conceded net cost of changes and extras	5,940.11
Revised Estimated Cost	$1,301,257.61
Deduct conceded actual cost	1,123,782.08
Difference	$ 177,475.53

On Contention F, (Alternative Contention of the Fleet Corporation and the Government) described in paragraph 5 hereof.

Estimated cost specified in Article XIX of said contract	$1,295,000.00
Increased labor cost	2,654.94
Conceded net cost of changes and extras	5,940.11
Revised Estimated Cost	$1,303,595.05
Deduct conceded actual cost	1,123,782.08
Difference	$ 179,812.97

64. The Fleet Corporation has paid to Bethlehem Ship on account of

the actual cost of said vessel	$1,142,822.60
fixed fee specified in said contract	115,400.56
the difference between the actual cost of said vessel and the revised estimated cost thereof	112,656.84
Total	$1,370,880.00

East Coast Contract No. 226 S. C.

(Bethlehem Ship's Eighth Cause of Action)

65. Under date of March 18, 1918, a contract, known as Contract No. 226 S. C., covering the construction at the Sparrows Point plant of four steel tank vessels, and three cargo vessels, was executed and delivered, a copy of which contract, subject to correction upon comparison with the original thereof, is Exhibit 13 annexed to the answer of Bethlehem Ship on file in the suit first above entitled and Exhibit 8 annexed to the statement in the action second above entitled. Said executed contract was delivered by the Fleet Corporation to Bethlehem Ship on May 1, 1918. Said contract was made pursuant to letters and a telegram which had passed between the Fleet Corporation and Bethlehem Ship on the respective dates thereof, copies of which marked Exhibits I, J and K are annexed hereto.

66. Bethlehem Ship completed and delivered said four steel tank vessels and said three cargo vessels with the changes mentioned in paragraph 69 hereof in accordance with the terms and provisions of said contract.

67. After the completion and delivery by Bethlehem Ship of said vessels an audit of the total cost of said vessels was made by the Fleet Corporation. In connection with such audit the Fleet Corporation also determined the net cost of changes and extras in and upon said vessels and the amount of the increase in labor cost by reason of increases in the rates of wages paid by Bethlehem Ship by the direction of or with the approval of the Fleet Corporation over the schedule of wages in effect at the Navy Yard of the United States at Norfolk, Virginia, on January 3, 1918, and over the schedule of wages promulgated by the Shipbuilding Labor Adjustment Board under date of February 14, 1918. The Fleet Corporation contends, however, that for the reasons stated in subdivision marked E of paragraph 5 hereof it is not possible to determine any amount by which the estimated cost of said vessels was to be increased because of such increases in labor cost under the provisions of Article XIX of said contract.

68. The Fleet Corporation and the Government concede that items of actual cost within the definition of actual cost in Article XVII of said contract were incurred by Bethlehem Ship in the construction of said vessels amounting in the aggregate to $10,904,547.82

69. The difference between the revised estimated cost of said vessels and the total actual cost thereof is

On Contention D, (Bethlehem Ship's Contention) described in paragraph 5 hereof.

Estimated cost specified in Article XIX of said contract	$11,885,000.00
Increased labor cost	1,969,148.85
Conceded net cost of changes and extras	124,402.00
Revised Estimated Cost	$13,978,550.85
Deduct conceded actual cost (i. e. $10,904,547.82) reduced by value of surplus materials and supplies (i. e. $13,118.77)	10,891,429.05
Difference	$ 3,087,121.80

On Contention E, (Contention of the Fleet Corporation and the Government) described in paragraph 5 hereof.

Estimated cost specified in Article XIX of said contract	$11,885,000.00
Increased labor cost paid to subcontractors	2,080.61
Conceded net cost of changes and extras	124,402.00
Revised Estimated Cost	$12,011,482.61
Deduct conceded actual cost (i. e. $10,904,547.82) reduced by value of surplus materials and supplies (i. e. $13,118.77)	10,891,429.05
Difference	$ 1,120,053.56

On Contention F, (Alternative Contention of the Fleet Corporation and the Government) described in paragraph 5 hereof.	
Estimated cost specified in Article XIX of said contract	$11,885,000.00
Increased labor cost	679,185.12
Conceded net cost of changes and extras	124,402.00
Revised Estimated Cost	$12,688,587.12
Deduct conceded actual cost (i. e. $10,904,547.82) reduced by value of surplus materials and supplies (i. e. $13,118.77).	10,891,429.05
Difference	$ 1,797,158.07

70. The Fleet Corporation has paid to Bethlehem Ship on account of

the actual cost of said vessels	$11,149,326.76
fixed fees specified in said contract	1,057,500.00
the difference between the actual cost of said vessels and the revised estimated cost thereof	837,579.61
Total	$13,044,406.37

West Coast Contract No. 230 S. C.

(Bethlehem Ship's Ninth Cause of Action)

71. Under date of April 22, 1918, a contract, known as Contract No. 230 S. C., covering the con-

struction at the Union plant of two steel cargo vessels, was executed and delivered, a copy of which contract, subject to correction upon comparison with the original thereof, is Exhibit 14 annexed to the answer of Bethlehem Ship on file in the suit first above entitled and Exhibit 9 annexed to the stipulation in the action second above entitled.

72. Bethlehem Ship completed and delivered said two steel cargo vessels with the changes mentioned in paragraph 76 hereof in accordance with the terms and provisions of said contract.

73. After the completion and delivery by Bethlehem Ship of said vessels an audit of the total cost of said vessels and of the revised estimated cost thereof as provided in Article XIX of said contract was made by the Fleet Corporation.

74. The Fleet Corporation and the Government concede that items of actual cost within the definition of actual cost in Article XVII of said contract were incurred by Bethlehem Ship in the construction of said vessels amounting in the aggregate to . . . $3,218,669.91

75. In addition to such conceded actual cost Bethlehem Ship asserts and claims herein as further actual cost alleged to have been incurred by it in the construction of and on account of said vessels the respective portions hereinafter mentioned of the items of cost set forth in paragraphs 314 and 315 of this stipulation, viz.:

Portion of unclaimed straight wages set forth in paragraph 314 hereof	$400.00
Portion of unclaimed retroactive wages set forth in paragraph 315 hereof	547.39

The Fleet Corporation and the Government concede that, subject to the terms of said paragraphs 314 and 315, the aforesaid apportionment is arithmetically correct as applicable to said vessels.

76. The difference between the revised estimated cost of said vessels and the total actual cost thereof (subject to modification as hereinafter stated) is

On Contention A, (Bethlehem Ship's Contention) described in paragraph 4 hereof.	
Estimated cost specified in Article XIX of said contract	$4,150,000.00
Increased labor cost	312,172.01
Conceded net cost of changes and extras	17,604.20
Revised Estimated Cost	$4,479,776.21
Deduct conceded actual cost (i. e. $3,218,669.91) reduced by value of surplus materials and supplies (i. e. $26,433.82)	3,192,236.09
Difference	$1,287,540.12
On Contention B, (Contention of the Fleet Corporation and the Government) described in paragraph 4 hereof.	
Estimated cost specified in Article XIX of said contract	$4,150,000.00
Increased labor cost	205,264.79
Conceded net cost of changes and extras	17,604.20
Revised Estimated Cost	$4,372,868.99

Deduct conceded actual cost (i. e. $3,218,669.91) reduced by value of surplus materials and supplies (i. e. $26,433.82)	3,192,236.09
Difference	$1,180,632.90

On Contention C, (Bethlehem Ship's Alternative Contention) described in paragraph 4 hereof.	
Estimated cost specified in Article XIX of said contract	$4,150,000.00
Increased labor cost	258,718.40
Conceded net cost of changes and extras	17,604.20
Revised Estimated Cost	$4,426,322.60
Deduct conceded actual cost (i. e. $3,218,669.91) reduced by value of surplus materials and supplies (i. e. $26,433.82)	3,192,236.09
Difference	$1,234,086.51

The amount of cost used in each of the foregoing computations is to be increased, and the amount of "Difference" decreased, in the event and to the extent that additional items of cost referred to in paragraph 75 hereof shall be found to be proper items of cost.

77. The Fleet Corporation has paid to Bethlehem Ship on account of

the actual cost of said vessels	$3,248,727.48

fixed fees specified in said contract	373,500.00
the difference between the actual cost of said vessels and the revised estimated cost thereof	455,000.00
Total	$4,077,227.48

East Coast Contract No. 299 S. C.

(Bethlehem Ship's Tenth Cause of Action)

78. Under date of April 30, 1918, a contract, known as Contract No. 299 S. C., covering the construction at the Fore River plant of three steel tank vessels, was executed and delivered, a copy of which contract, subject to correction upon comparison with the original thereof, is Exhibit 15 annexed to the answer of Bethlehem Ship on file in the suit first above entitled and Exhibit 10 annexed to the statement in the action second above entitled. Said executed contract was delivered by the Fleet Corporation to Bethlehem Ship on May 27, 1918. Said contract was made pursuant to letters which had passed between the Fleet Corporation and Bethlehem Ship on the respective dates thereof, copies of which marked Exhibits L and M are annexed hereto.

79. Bethlehem Ship completed and delivered said three steel tank vessels with the changes mentioned in paragraph 83 hereof in accordance with the terms and provisions of said contract.

80. After the completion and delivery by Bethlehem Ship of said vessels an audit of the total cost of said vessels was made by the Fleet Corporation. In connection with such audit the Fleet Corporation

also determined the net cost of changes and extras in and upon said vessels and the amount of the increase in labor cost by reason of increases in the rates of wages paid by Bethlehem Ship by the direction of or with the approval of the Fleet Corporation over the schedule of wages in effect at the Navy Yard of the United States at Boston, Massachusetts, on January 3, 1918, and over the schedule of wages promulgated by the Shipbuilding Labor Adjustment Board under date of April 6, 1918. The Fleet Corporation contends, however, that for the reasons stated in subdivision marked E of paragraph 5 hereof it is not possible to determine any amount by which the estimated cost of said vessels was to be increased because of such increases in labor cost under the provisions of Article XIX of said contract.

81. The Fleet Corporation and the Government concede that items of actual cost within the definition of actual cost in Article XVII of said contract were incurred by Bethlehem Ship in the construction of said vessels amounting in the aggregate to $4,867,111.57

82. In addition to such conceded actual cost Bethlehem Ship asserts and claims herein as further actual cost alleged to have been incurred by it in the construction of and on account of said vessels the respective portions hereinafter mentioned of the items of cost set forth in paragraphs 314 and 316 of this stipulation, viz.:

Portion of unclaimed straight wages set forth in paragraph 314 hereof	$3,833.19
Portion of Soldiers' Bonus Tax set forth in paragraph 316 hereof	3,012.70

The Fleet Corporation and the Government concede that, subject to the terms of said paragraphs 314 and 316, the aforesaid apportionment is arithmetically correct as applicable to said vessels.

83. The difference between the revised estimated cost of said vessels and the total actual cost thereof (subject to modification as hereinafter stated) is

On Contention D, (Bethlehem Ship's Contention) described in paragraph 5 hereof.	
Estimated cost specified in Article XIX of said contract	$5,550,000.00
Increased labor cost	635,349.36
Conceded net deduction for changes and extras	10,581.00
Revised Estimated Cost	$6,174,768.36
Deduct conceded actual cost (i. e. $4,867,111.57) reduced by value of surplus materials and supplies (i. e. $18,516.22)	4,848,595.35
Difference	$1,326,173.01
On Contention E, (Contention of the Fleet Corporation and the Government) described in paragraph 5 hereof.	
Estimated cost specified in Article XIX of said contract	$5,550,000.00
Increased labor cost	None
Conceded net deduction for changes and extras	10,581.00
Revised Estimated Cost	$5,539,419.00

Deduct conceded actual cost (i. e. $4,867,111.57) reduced by value of surplus materials and supplies (i. e. $18,516.22)	4,848,595.35
Difference	$ 690,823.65

On Contention F, (Alternative Contention of the Fleet Corporation and the Government) described in paragraph 5 hereof.

Estimated cost specified in Article XIX of said contract	$5,550,000.00
Increased labor cost	319,025.08
Conceded net deduction for changes and extras	10,581.00
Revised Estimated Cost	$5,858,444.08
Deduct conceded actual cost (i. e. $4,867,111.57) reduced by value of surplus materials and supplies (i. e. $18,516.22)	4,848,595.35
Difference	$1,009,848.73

The amount of cost used in each of the foregoing computations is to be increased, and the amount of "Difference" decreased, in the event and to the extent that additional items of cost referred to in paragraph 82 hereof shall be found to be proper items of cost.

84. The Fleet Corporation has paid to Bethlehem Ship on account of

the actual cost of said vessels	$4,897,050.21

fixed fees specified in said contract	499,500.00
the difference between the actual cost of said vessels and the revised estimated cost thereof	479,402.75
Total	$5,875,952.96

East Coast Contract No. 300 S. C.

(Bethlehem Ship's Eleventh Cause of Action)

85. Under date of April 30, 1918, a contract, known as Contract No. 300 S. C., covering the construction at the Sparrows Point plant of three steel tank vessels, was executed and delivered, a copy of which contract, subject to correction upon comparison with the original thereof, is Exhibit 16 annexed to the answer of Bethlehem Ship on file in the suit first above entitled and Exhibit 11 annexed to the statement in the action second above entitled. Said executed contract was delivered by the Fleet Corporation to Bethlehem Ship on May 27, 1918. Said contract was made pursuant to letters which had passed between the Fleet Corporation and Bethlehem Ship on the respective dates thereof, copies of which marked Exhibits L and M are annexed hereto.

86. Bethlehem Ship completed and delivered said three steel tank vessels with the changes mentioned in paragraph 89 hereof in accordance with the terms and provisions of said contract.

87. After the completion and delivery by Bethlehem Ship of said vessels an audit of the total cost of said vessels was made by the Fleet Corporation. In connection with such audit the Fleet Corporation also determined the net cost of changes and extras

in and upon said vessels and the amount of the increase in labor cost by reason of increases in the rates of wages paid by Bethlehem Ship by the direction of or with the approval of the Fleet Corporation over the schedule of wages in effect at the Navy Yard of the United States at Norfolk, Virginia, on January 3, 1918, and over the schedule of wages promulgated by the Shipbuilding Labor Adjustment Board under date of February 14, 1918. The Fleet Corporation contends, however, that for the reasons stated in subdivision marked E of paragraph 5 hereof it is not possible to determine any amount by which the estimated cost of said vessels was to be increased because of such increases in labor cost under the provisions of Article XIX of said contract.

88. The Fleet Corporation and the Government concede that items of actual cost within the definition of actual cost in Article XVII of said contract were incurred by Bethlehem Ship in the construction of said vessels amounting in the aggregate to $5,125,053.23

89. The difference between the revised estimated cost of said vessels and the total actual cost thereof is

On Contention D, (Bethlehem Ship's Contention) described in paragraph 5 hereof.	
Estimated cost specified in Article XIX of said contract	$6,000,000.00
Increased labor cost	899,911.67
Conceded net cost of changes and	

extras	41,039.00
Revised Estimated Cost	$6,940,950.67
Deduct conceded actual cost (i. e. $5,125,053.23) reduced by value of surplus materials and supplies (i. e. $2,465.36)	5,122,587.87
Difference	$1,818,362.80

On Contention E, (Contention of the Fleet Corporation and the Government) described in paragraph 5 hereof.

Estimated cost specified in Article XIX of said contract	$6,000,000.00
Increased labor cost paid to subcontractors	560.86
Conceded net cost of changes and extras	41,039.00
Revised Estimated Cost	$6,041,599.86
Deduct conceded actual cost (i. e. $5,125,053.23) reduced by value of surplus materials and supplies (i. e. $2,465.36)	5,122,587.87
Difference	$ 919,011.99

On Contention F, (Alternative Contention of the Fleet Corporation and the Government) described in paragraph 5 hereof.

Estimated cost specified in Article XIX of said contract	$6,000,000.00

Increased labor cost	334,415.07
Conceded net cost of changes and extras	41;039.00
Revised Estimated Cost	$6,375,454.07
Deduct conceded actual cost (i. e. $5,125,053.23) reduced by value of surplus materials and supplies (i. e. $2,465.36)	5,122,587.87
Difference	$1,252,866.20

90. The Fleet Corporation has paid to Bethlehem Ship on account of

the actual cost of said vessels	$5,166,180.02
fixed fees specified in said contract	540,000.00
the difference between the actual cost of said vessels and the revised estimated cost thereof	667,660.53
Total	$6,373,840.55

West Coast Contract No. 301 S. C.

(Bethlehem Ship's Twelfth Cause of Action)

91. Under date of April 30, 1918, a contract, known as Contract No. 301 S. C., covering the construction at the Union plant of six steel tank vessels and six cargo vessels, denominated by the Fleet Corporation as Hulls numbers 1676 to 1687, inclusive, was executed and delivered, a copy of which contract subject to correction upon comparison with the original thereof, is Exhibit 17 annexed to the answer of

Bethlehem Ship on file in the suit first above entitled and Exhibit 12 annexed to the statement in the action second above entitled. Said executed contract was delivered by the Fleet Corporation to Bethlehem Ship on May 27, 1919. Said contract was made pursuant to letters which had passed between the Fleet Corporation and Bethlehem Ship on the respective dates thereof, copies of which marked Exhibits L and M are annexed hereto. Thereafter, with respect to the construction of three of said cargo vessels, Hulls numbers 1685, 1686 and 1687, said contract was terminated by the Fleet Corporation after the construction thereof had been begun, but remained in operation with respect to the construction of said six tank vessels and three cargo vessels.

92. Bethlehem Ship completed and delivered said six tank vessels and three cargo vessels with the changes mentioned in paragraph 96 hereof in accordance with the terms and provisions of said contract.

93. After the completion and delivery by Bethlehem Ship of said vessels an audit of the total cost of said vessels and of the revised estimated cost thereof as provided in Article XIX of said contract was made by the Fleet Corporation.

94. The Fleet Corporation and the Government concede that items of actual cost within the definition of actual cost in Article XVII of said contract were incurred by Bethlehem Ship in the construction of said completed vessels amounting in the aggregate to $15,344,832.08
and in the partial construction of said uncompleted vessels $699,746.46

and that upon said last named amount Bethlehem Ship is entitled to a fee for profit of ten per cent. thereof.

95. In addition to such conceded actual cost Bethlehem Ship asserts and claims herein as further actual cost alleged to have been incurred by it in the construction of and on account of said completed vessels the respective portions hereinafter mentioned of the items of cost set forth in paragraphs 314 and 315 of this stipulation, viz.:

Portion of unclaimed straight wages set forth in paragraph 314 hereof	$1,711.22
Portion of unclaimed retroactive wages set forth in paragraph 315 hereof	$328.43

The Fleet Corporation and the Government concede that, subject to the terms of said paragraphs 314 and 315, the aforesaid apportionment is arithmetically correct as applicable to said vessels.

96. The difference between the revised estimated cost of said completed vessels and the total actual cost thereof (subject to modification as hereinafter stated) is

On Contention A, (Bethlehem Ship's Contention) described in paragraph 4 hereof.	
Estimated cost specified in Article XIX of said contract	$18,825,000.00
Increased labor cost	1,357,409.46
Conceded net cost of changes and extras	46,532.03
Revised Estimated Cost	$20,228,941.49

Deduct conceded actual cost (i. e. $15,344,832.08) reduced by value of surplus materials and supplies (i. e. $70,363.39)	15,274,468.69
Difference	$ 4,954,472.80

On Contention B, (Contention of the Fleet Corporation and the Government) described in paragraph 4 hereof.	
Estimated cost specified in Article XIX of said contract	$18,825,000.00
Increased labor cost	898,230.47
Conceded net cost of changes and extras	46,532.03
Revised Estimated Cost	$19,769,762.50
Deduct conceded actual cost (i. e. $15,344,832.08) reduced by value of surplus materials and supplies (i. e. $70,363.39)	$15,274,468.69
Difference	$ 4,495,293.81

On Contention C, (Bethlehem Ship's Alternative Contention) described in paragraph 4 hereof.	
Estimated cost specified in Article XIX of said contract	$18,825,000.00
Increased labor cost	1,127,819.96
Conceded net cost of changes and extras	46,532.03
Revised Estimated Cost	$19,999,351.99

Deduct conceded actual cost (i. e. $15,344,832.08) reduced by value of surplus materials and supplies (i. e. $70,363.39)	15,274,468.69
Difference	$ 4,724,883.30

The amount of cost used in each of the foregoing computations is to be increased, and the amount of "Difference" decreased, in the event and to the extent that additional items of cost referred to in paragraph 95 hereof shall be found to be proper items of cost.

97. The Fleet Corporation has paid to Bethlehem Ship on account of

the actual cost of said completed vessels	$15,360,150.17
fixed fees for said completed vessels specified in said contract	1,694,250.00
the difference between the actual cost of said completed vessels and the revised estimated cost thereof	1,744,757.57
Total on account of completed vessels	$18,799,157.74
the actual cost of said uncompleted vessels	$ 814,685.34
fee for partial construction of said uncompleted vessels	26,604.85
Total on account of uncompleted vessels	$ 841,290.19

East Coast Contract No. 312 S. C.

98. Under date of May 15, 1918, a contract, known as Contract No. 312 S. C., covering the construction at the Sparrows Point plant of three steel cargo vessels, was executed and delivered, a copy of which contract, subject to correction upon comparison with the original therof, is Exhibit 18 annexed to the answer of Bethlehem Ship on file in the suit first above entitled. Said executed contract was delivered by the Fleet Corporation to Bethlehem Ship on July 19, 1918. Said contract was made pursuant to letters which had passed between the Fleet Corporation and Bethlehem Ship on the respective dates thereof, copies of which marked Exhibits L, M and N are annexed hereto.

99. After Bethlehem Ship had begun work for the construction of said three steel cargo vessels and before the completion thereof, said contract was terminated by the Fleet Corporation and as to the further construction of said vessels was cancelled.

100. After such termination of said contract an audit of the total cost incurred by Bethlehem Ship in the partial construction of said vessels was made by the Fleet Corporation.

101. The Fleet Corporation and the Government concede that items of actual cost within the definition of actual cost in Article XVII of said contract were incurred by Bethlehem Ship in the partial construction of said vessels amounting in the aggregate to $313,594.89 and that upon said amount Bethlehem Ship is entitled to a fee for profit of ten per cent. thereof.

102. The Fleet Corporation has paid to Bethlehem Ship on account of

the actual cost of said uncompleted vessels	$392,387.49
fee for partial construction of said vessels	28,471.31
Total	$420,858.80

East Coast Contract No. 313 S. C.

(Bethlehem Ship's Thirteenth Cause of Action)

103. Under date of May 15, 1918, a contract, known as Contract No. 313 S. C., covering the construction at the Moore plant of ten tug boats, was executed and delivered, a copy of which contract, subject to correction upon comparison with the original thereof, is Exhibit 19 annexed to the answer of Bethlehem Ship on file in the suit first above entitled and Exhibit 13 annexed to the statement in the action second above entitled. Said executed contract was delivered by the Fleet Corporation to Bethlehem Ship on July 19, 1918. Said contract was made pursuant to letters which had passed between the Fleet Corporation and Bethlehem Ship on the respective dates thereof, copies of which marked Exhibits L, M and N are annexed hereto.

104. After Bethlehem Ship had begun work for the construction of said ten tug boats and before the completion thereof, said contract was terminated by the Fleet Corporation and as to the further construction of said vessels was cancelled.

105. After such termination of said contract an audit of the total cost incurred by Bethlehem Ship

in the partial construction of said vessels was made by the Fleet Corporation.

106. The Fleet Corporation and the Government concede that items of actual cost within the definition of actual cost in Article XVII of said contract were incurred by Bethlehem Ship in the partial construction of said vessels amounting in the aggregate to $ 488,192.25 and that upon said amount Bethlehem Ship is entitled to a fee for profit of ten per cent. thereof.

107. The Fleet Corporation has paid to Bethlehem Ship on account of

the actual cost of said uncompleted vessels	$431,564.19
fee for partial construction of said vessels	21,402.99
Total	$452,967.18

East Coast Contract No. 314 S. C.

(Bethlehem Ship's Fourteenth Cause of Action)

108. Under date of May 15, 1918, a contract, known as Contract No. 314 S. C., covering the construction at the Harlan plant of three steel tank vessels and seven steel cargo vessels, was executed and delivered, a copy of which contract, subject to correction upon comparison with the original thereof, is Exhibit 20 annexed to the answer of Bethlehem Ship on file in the suit first above entitled and Exhibit 14 annexed to the statement in the action sec-

ond above entitled. Said executed contract was delivered by the Fleet Corporation to Bethlehem Ship on July 19, 1918. Said contract was made pursuant to letters which had passed between the Fleet Corporation and Bethlehem Ship on the respective dates thereof, copies of which marked Exhibits L, M and N are annexed hereto.

109. Bethlehem Ship completed and delivered said three steel tank and seven steel cargo vessels with the changes mentioned in paragraph 113 hereof in accordance with the terms and provisions of said contract.

110. After the completion and delivery by Bethlehem Ship of said vessels an audit of the total cost of said vessels was made by the Fleet Corporation. In connection with such audit the Fleet Corporation also determined the net cost of changes and extras in and upon said vessels and the amount of the increase in labor cost by reason of increases in the rates of wages paid by Bethlehem Ship by the direction of or with the approval of the Fleet Corporation over the schedule of wages in effect at the Navy Yard of the United States at Philadelphia, Pennsylvania, on January 3, 1918, and over the schedule of wages promulgated by the Shipbuilding Labor Adjustment Board under date of February 14, 1918. The Fleet Corporation contends, however, that for the reasons stated in subdivision marked E of paragraph 5 hereof it is not possible to determine any amount by which the estimated cost of said vessels was to be increased because of such increases in labor cost under the provisions of Article XIX of said contract.

111. The Fleet Corporation and the Government concede that items of ac-

tual cost within the definition of actual cost in Article XVII of said contract were incurred by Bethlehem Ship in the construction of said vessels amounting in the aggregate to $13,070,101.09

112. In addition to such conceded actual cost Bethlehem Ship asserts and claims herein as further actual cost alleged to have been incurred by it in the construction of and on account of said vessels the portion hereinafter mentioned of the item of cost set forth in paragraph 314 of this stipulation, viz.:

Portion of unclaimed straight wages set forth in paragraph 314 hereof	$3,744.37

The Fleet Corporation and the Government concede that, subject to the terms of said paragraph 314, the aforesaid apportionment is arithmetically correct as applicable to said vessels.

113. The difference between the revised estimated cost of said vessels and the total actual cost thereof (subject to modification as hereinafter stated) is

On Contention D, (Bethlehem Ship's Contention) described in paragraph 5 hereof.	
Estimated cost specified in Article XIX of said contract	$11,540,000.00
Increased labor cost	2,511,201.61
Conceded net cost of changes and extras	333,100.50
Revised Estimated Cost	$14,384,302.11

Deduct conceded actual cost (i. e. $13,070,101.09) reduced by value of surplus materials and supplies (i. e. $48,130.79)	$13,021,970.30
Difference	$1,362,331.81

On Contention E, (Contention of the Fleet Corporation and the Government) described in paragraph 5 hereof.	
Estimated cost specified in Article XIX of said contract	$11,540,000.00
Increased labor cost paid to subcontractors	5,418.52
Conceded net cost of changes and extras	333,100.50
Revised Estimated Cost	$11,878,519.02
Deduct conceded actual cost (i. e. $13,070,101.09) reduced by value of surplus materials and supplies (i. e. $48,130.79)	13,021,970.30
Difference (no saving)	

On Contention F, (Alternative Contention of the Fleet Corporation and the Government) described in paragraph 5 hereof.	
Estimated cost specified in Article XIX of said contract	$11,540,000.00
Increased labor cost	1,146,620.48
Conceded net cost of changes and	

extras	333,100.50
Revised Estimated Cost	$13,019,720.98
Deduct conceded actual cost (i. e. $13,070,101.09) reduced by value of surplus materials and supplies (i. e. $48,130.79)	$13,021,970.30
Difference	

The amount of cost used in each of the foregoing computations is to be increased, and the amount of "Difference" decreased, in the event and to the extent that the additional item of cost referred to in paragraph 112 hereof shall be found to be a proper item of cost.

114. The Fleet Corporation has paid to Bethlehem Ship on account of

the actual cost of said vessels	$13,172,512.23
fixed fees specified in said contract	1,038,577.35
the difference between the actual cost of said vessels and the revised estimated cost thereof	136,389.98
Total	$14,347,479.56

West Coast Contract No. 340 S. C.

(Bethlehem Ship's Fifteenth Cause of Action)

115. Under date of June 21, 1918, a contract, known as Contract No. 340 S. C., covering the construction and equipping at Alameda, California, of a shipbuilding plant and twenty steel troop ships and

the construction of an office building at Bethlehem, Pennsylvania, was executed and delivered, a copy of which contract, subject to correction upon comparison with the original thereof, is Exhibit 21 annexed to the answer of Bethlehem Ship on file in the suit first above entitled and Exhibit 15 annexed to the statement in the action second above entitled.

116. After Bethlehem Ship had completed said office building and had begun the construction of said shipbuilding plant and had begun work for the construction of said vessels and before the completion of said plant or of any of said vessels, said contract was terminated by the Fleet Corporation and as to the further construction of said plant and vessels was cancelled.

117. After such termination of said contract an audit of the cost incurred by Bethlehem Ship in the partial construction of said shipbuilding plant and of said vessels was made by the Fleet Corporation.

118. Items of actual cost within the definition of actual cost in Articles XX and XXI of said contract were incurred by Bethlehem Ship and paid by the Fleet Corporation on account of the partial construction of said shipbuilding plant amounting in the aggregate to $5,160,971.59

and on account of the partial construction of said vessels amounting in the aggregate to 375,000.00

C. G. P. H. P. B. G. W. C. R. B. E. ~~It is agreed that on account of the compensation due to Bethlehem Ship under Article XXIV of said contract of 5 per cent. of said sum of $5,160,971.59 and 7½~~

~~per cent. of said sum of $375,000, there shall be credited, as if paid to it, the sum of $10,000, being the agreed salvage value of the interest of the Fleet Corporation and/or the Government in said office building erected at Bethlehem, Pennsylvania.~~

East Coast Contract No. 465 S. C.

(Bethlehem Ship's Sixteenth Cause of Action)

See First Supplemental Stipulation of Facts, Exhibit B.

316. Massachusetts Soldiers' Bonus Tax. Under a tax law of the State of Massachusetts, Act of July 22, 1919 (General Acts 1919, Chap. 342), known as the Soldiers' Bonus Tax Law, Bethlehem Ship paid a tax to said State assessed against it in connection with its operation of the Fore River plant. Bethlehem Ship contends that the portion of the tax so paid properly allocated to the vessels then under construction at said plant, under the contracts therefor executed by the Fleet Corporation hereinbefore referred to, constitutes a part of the cost of construction of such vessels within the meaning of Article XVII of each said contract. If such contention of Bethlehem Ship be correct then the portion of the amount of the tax so paid properly allocated to said vessels amounts in the aggregate to $6,025.40, which aggregate amount is allocated to the respective contracts above in this paragraph referred to in the following amounts:

Contract	*Portion of Tax Properly Allocated*
183 S. C.	$3,012.70
299 S. C.	3,012.70

The Fleet Corporation and the Government contend, however, that no part of the tax paid under said Soldiers' Bonus Tax Law can properly be included in cost under the definition of actual cost contained in Article XVII of said respective contracts.

318. This stipulation of facts may be used by either party, subject to objections as to the relevancy of any parts thereof in any or all of the causes above entitled or in the action now pending in the District Court of the United States for the Southern District of New York between Bethlehem Ship as plaintiff and the Fleet Corporation as defendant or in any subsequent proceeding which may be brought by Bethlehem Ship, Bethlehem Steel Company, Fore River or Union to enforce the claims herein referred to or any of them.

Dated April 8th, 1926.

THE UNITED STATES OF AMERICA AND
UNITED STATES SHIPPING BOARD EMERGENCY
FLEET CORPORATION,

by HENRY P. BROWN
Special Assistant to the
Attorney General.
GEORGE W. COLES
United States Attorney for
the Eastern District of
Pennsylvania.
CHAUNCEY G. PARKER
General Counsel for United

States Shipping Board Emergency Fleet Corporation.

BETHLEHEM STEEL CORPORATION
BETHLEHEM SHIPBUILDING CORPORATION, LTD.
BETHLEHEM STEEL COMPANY
FORE RIVER SHIPBUILDING CORPORATION and
UNION IRON WORKS COMPANY
by

CHARLES SINKLER and RALPH B. EVANS
Solicitors and Attorneys

CRAVATH, HENDERSON & DE GERSDORFF
Counsel.

EXHIBIT E

Exhibit E is the same as Exhibit G109 shown elsewhere in this transcript.

EXHIBIT F

Exhibit F is the same as Exhibit B29 shown elsewhere in this transcript.

EXHIBIT G

Exhibit G is the same as Exhibit G107 shown elsewhere in this transcript.

EXHIBIT H

Exhibit H is the same as Exhibit B30 shown elsewhere in this transcript.

EXHIBIT I

Exhibit I is the same as Exhibit G125 shown elsewhere in this transcript.

EXHIBIT J

Exhibit J is the same as Exhibit G127 shown elsewhere in this transcript.

EXHIBIT K

Exhibit K is the same as Exhibit B14 shown elsewhere in this transcript.

EXHIBIT L

Exhibit L is the same as Exhibit G132 shown elsewhere in this transcript.

EXHIBIT M

Exhibit M is the same as Exhibit G134 shown elsewhere in this transcript.

EXHIBIT N

Exhibit N is the same as Exhibit G135 shown elsewhere in this transcript.

EXHIBIT B

DISTRICT COURT OF THE UNITED STATES
Eastern District of Pennsylvania

The United States of America,
Complainant,
against
Bethlehem Steel Corporation; Bethlehem Shipbuilding Corporation, Ltd., Bethlehem Steel Company; Fore River Shipbuilding Corporation; and Union Iron Works Company,
Defendants.

In Equity, No. 3315 March Term, 1925

Bethlehem Shipbuilding Corporation, Ltd.,
Plaintiff,
against
United States Shipping Board Emergency Fleet Corporation,
Defendant.

At Law, No. 11970 December Sessions, 1925

FIRST SUPPLEMENTAL STIPULATION OF FACTS

The United States of America is herein called the Government; United States Shipping Board Emergency Fleet Corporation, the Fleet Corporation;

and Bethlehem Shipbuilding Corporation, Ltd., Bethlehem Ship.

Under date of July 15, 1918, a contract, known as Contract No. 465 S. C., covering the construction at the Sparrows Point plant of six troop ships, denominated by the Fleet Corporation as Hulls numbers 2505 to 2510, inclusive, was executed and delivered, a copy of which contract subject to correction upon comparison with the original thereof, is Exhibit 22 annexed to the answer of Bethlehem Ship on file in the suit first above entitled and Exhibit 16 annexed to the statement in the action second above entitled.

At the time of entering into the stipulation of facts between the parties hereto dated April 8th, 1926, entitled in the above-named causes and three other causes pending in the same court, the parties hereto were not in agreement concerning the net cost of changes made in the construction of the three vessels completed under said contract and for that reason said stipulation did not contain complete figures showing the amounts by which the estimated cost of said vessels is to be increased in accordance with the provisions of Article XIX of said contract.

In amendment of and as supplemental to said stipulation of facts dated April 8th, 1926, it is hereby stipulated and agreed by and between the parties to the above-entitled causes as follows:

1. In consequence of further examination into the net cost of changes made in the construction of said vessels the parties hereto hereby agree that any controversy existing or which may have heretofore existed between them respecting the amount by which

the cost of said vessels was increased on account of increases in the rates of wages for labor paid at the direction of the Fleet Corporation arising by reason of their respective contentions concerning the schedule of wages referred to in said Article XIX as stated in paragraph 5 of said stipulation dated April 8th, 1926, is immaterial with respect to said contract No. 465 S. C. for the following reason, viz.:

That under the provisions of said Article XIX of said contract the amount by which the compensation of Bethlehem Ship might be increased on account of the difference between the actual cost of said vessels and the estimated cost or revised estimated cost provided in said Article XIX is limited as a maximum to one-half of $400,000 or $200,000 per vessel and the parties hereto are now agreed and hereby concede that the net cost of changes made in the construction of each of said vessels was such that under the provisions of said Article XIX the estimated cost of each such vessel was so far increased thereby, without adding anything thereto on account of wage increases and after allowing for changes in cost of materials and freight rates, that the revised estimated cost of each said vessel was in excess of the actual cost thereof by an amount such that the difference between the actual cost and the revised estimated cost was in excess of $400,000.

2. The statements contained in paragraphs 119 to 126 inclusive of said stipulation of facts dated April 8th, 1926, are hereby withdrawn and abrogated and the parties hereto hereby concede as follows:

3. With respect to the construction of three of said six vessels, to be constructed under said contract No. 465 S. C. viz.: Hulls numbers 2508, 2509 and 2510, said contract was terminated by the Fleet Corporation after work for the construction thereof had been begun, but remained in operation with respect to the construction of the other three vessels.

4. Bethlehem Ship completed and delivered said three vessels as combined passenger and cargo vessels with the changes mentioned in paragraph 1 hereof in accordance with the terms and provisions of said contract.

5. After the completion and delivery by Bethlehem Ship of said vessels an audit of the total cost of said vessels was made by the Fleet Corporation. The Fleet Corporation and the Government concede that items of actual cost within the definition of actual cost in Article XVII of said contract were incurred by Bethlehem Ship in the construction of said completed vessels amounting in the aggregate to $15,224,505.52
and in the partial construction of said uncompleted vessels, amounting in the aggregate to 2,888,648.70

and that upon said last named amount and any additional amount of actual cost found due to it on account of said uncompleted vessels Bethlehem Ship is entitled to a fee for profit of 7.6923 per cent. thereof.

6. In addition to such conceded actual cost Bethlehem Ship asserts and claims herein as further

actual cost alleged to have been incurred by it in the construction of and on account of said completed vessels the portion hereinafter mentioned of the item of cost set forth in paragraph 314 of said stipulation dated April 8th, 1926, and the following amount of royalty paid by it to Redington Standard Fittings Company on account of Curtis turbine engines installed in said vessel, viz.:

Portions of unclaimed straight wages set forth in said paragraph 314	$ 8.22
Amount of royalty paid on account of Curtis turbines in excess of the amount thereof included in the cost of said completed vessels conceded in paragraph 5 hereof	9,000.00

and as further actual cost alleged to have been incurred by it in the partial construction of and on account of said uncompleted vessels the following amount of royalty paid by it to Redington Standard Fittings Company on account of Curtis turbine engines furnished for said uncompleted vessels and the following amount of cost incurred on account of said vessels after September 7, 1920, viz.:

Amount of royalty paid on account of Curtis turbines in excess of the amount thereof included in the cost of uncompleted vessels conceded in paragraph 5 hereof	$ 9,000.00
Amount of cost incurred on account of said uncompleted vessels after September 7, 1920	136,238.26

The Fleet Corporation and the Government concede that, subject to the terms of said paragraph 314 of said stipulation dated April 8th, 1926, the

aforesaid apportionment of unclaimed wages referred to in said paragraph 314 is arithmetically correct as applicable to said completed vessels. The Fleet Corporation and the Government further concede that said amounts of royalty were paid on account of said completed vessels and of said uncompleted vessels, respectively, as above set forth, and that said amount of cost after September 7, 1920 was incurred on account of said uncompleted vessels but deny that said amounts of royalty paid, or either of them, are proper items of actual cost within the definition of actual cost contained in Article XVII of said contract, and further deny that said amount of cost incurred after September 7, 1920 is cost for which Bethlehem Ship was entitled to be repaid upon the cancellation by the Fleet Corporation of said uncompleted vessels.

7. The Fleet Corporation and the Government contend that on account of all the facts and reasons alleged in their pleadings in the causes above entitled, Bethlehem Ship became entitled to receive for the construction of the three completed vessels under contract No. 465 S. C. only the amounts as follows:

(a) Agreed cost exclusive of surplus materials	$15,071,907.16
(b) Profit of 10% on $15,071,907.16	1,507,190.72
(c) Value of surplus materials	152,598.36
Total	$16,731,696.24

The Fleet Corporation and the Government concede that in the event the Court should allow the items claimed by Bethlehem Ship in paragraph 6

as additional items of cost that such items should be added to the amounts shown above in this paragraph together with a profit of 10% on such additional items.

8. If, as is contended by Bethlehem Ship, Bethlehem Ship is to be paid for the construction of said three completed vessels in accordance with the provisions of said contract, then it is conceded that the amount to which it became entitled (subject to modification as hereinafter stated) is as follows:

Actual cost of said three completed vessels	$15,224,305.52
Fixed fee for profit provided in said contract (three times $320,000)	960,000.00
On account of savings accomplished in the construction of said vessels (to wit, on account of the difference between revised estimated cost as agreed in paragraph 1 hereof and actual cost)	600,000.00
Increase of fixed fee for profit on account of increase in cost due to changes from the contract plans and specifications	246,000.00
Total	$17,030,505.52

The above-mentioned amount of actual cost is to be increased in the event and to the extent that additional items of cost referred to in paragraph 6 hereof shall be found to be proper items of cost of said completed vessels.

9. The Fleet Corporation has paid to Bethlehem Ship on account of

the actual cost of said completed vessels	$15,240,199.30
fixed fees for said completed vessels, as specified in said contract	864,000.00
the difference between the actual cost of said vessels and the revised estimated cost thereof	Nothing
Total on account of completed vessels	$16,104,199.30
the actual cost of said uncompleted vessels	2,669,328.70
fee for partial construction of said uncompleted vessels	238,112.40
Total on account of uncompleted vessels	$2,907,441.10

10. Paragraphs 2, 3, 3-a and 318 of said stipulation of facts of April 8th, 1926, are hereby made applicable to the facts conceded in this first supplemental stipulation of facts in all respects as if the statements herein contained were contained in said stipulation of April 8th, 1926.

Dated, August 3, 1926.

THE UNITED STATES OF AMERICA and
UNITED STATES SHIPPING BOARD EMERGENCY
FLEET CORPORATION,

by

HENRY P. BROWN
Special Assistant to the Attorney General.

GEORGE W. COLES
United States Attorney for the Eastern District of Pennsylvania.
CHAUNCEY G. PARKER
General Counsel for United States Shipping Board Emergency Fleet Corporation,

BETHLEHEM STEEL CORPORATION
BETHLEHEM SHIPBUILDING CORPORATION, LTD.
BETHLEHEM STEEL COMPANY
FORE RIVER SHIPBUILDING CORPORATION and
UNION IRON WORKS COMPANY

by

CHARLES SINKLER
and
RALPH B. EVANS
Solicitors and Attorneys
CRAVATH, HENDERSON & DE GERSDORFF
Counsel.

EXHIBIT D

Bethlehem v. Fleet Corporation

MEMORANDUM OF AGREEMENT OF COUNSEL

1. Bethlehem waives all claims on requisitioned ships and the Fleet Corporation and the Government waive all claims for overpayments on requisitioned ships.

2. Bethlehem waives any claim for unpaid balance of the appropriations for plant improvements and facilities, and the Fleet Corporation and the Government waive any claim to the plant improvements and facilities, including the office building at Bethlehem, and if necessary agree to give bills of sale and deeds of conveyance vesting absolute title in Bethlehem.

3. Fleet Corporation and the Government concede one-half of Bethlehem's claim for replacing alleged defective work on the Cabrille and two other tankers, and Bethlehem agrees to accept one-half of its claim in full on that account.

4. Fleet Corporation and the Government concede one-half of Bethlehem's claim for expenses incurred after September 7, 1920, in connection with cancelled ships under contract #465, and Bethlehem agrees to accept one-half of its claim in full on this account.

5. Fleet Corporation and the Government concede the amount of Bethlehem's claim on the contract for the Curtis marine propelling equipment, and waives any claim for overpayment or off-set on that contract.

6. Bethlehem concedes that the unclaimed straight wages and unclaimed retroactive wages, including increased wages included in unclaimed straight wages, if any, are not to be charged as cost on account of contract ships.

7. The items scheduled in Exhibit "F" of the Government's Bill in Equity are settled as follows:

Material sold to shipbuilder: Bethlehem concedes this item.

Surplus steel used by shipbuilder: Bethlehem concedes $6,400; Fleet Corporation and the Government waive the balance of the claim on this item.

Unbilled material: This has been adjusted in the stipulation by increasing the cost of contract ships by that amount and increasing the credit to the Fleet Corporation or the Government for the payments on account in a like amount.

Carfare at Sparrows Point and *Idle Plant at Sparrows Point:* Bethlehem concedes these items.

Cost of Perley Morse audit: Fleet Corporation and the Government waive any claims on this item.

8. Bethlehem waives any claim for damages due to delay in completing the audit and the Fleet Corporation and the Government waive any claim for additional expenses in connection with making the audit on account of Bethlehem's alleged failure to keep proper records.

9. Bethlehem concedes interest at the rate allowed by the bank on its deposits with respect to the $8,000,000 advanced by the Fleet Corporation or the Government, the amount of the interest on this item being $132,770.91.

10. The Fleet Corporation and the Government concede that royalties paid on Curtis turbines and Massachusetts Soldiers' Bonus Tax are proper items to be charged as cost on contract ships.

EXHIBIT G-4

May 1st, 1928.

Ralph B. Evans, Esq.,
Land Title Building,
Philadelphia, Penna.

Dear Mr. Evans: Re: U. S.—Bethlehem Litigation.

As stated in our conversation with you yesterday, we would like Bethlehem to furnish us, as soon as possible, with the following:-

First: The plans, specifications and actual structural changes and extras, including eliminations for the following vessels:

FORE RIVER:

Hull 251—J. Luckenback
Hull 253—Pennsylvania
Hull 254—Virginia
Hull 255—Huergo

HARLAN PLANT:

441—B. Brewster
448—Olean

SPARROWS POINT:

158 and 159—James McGee and W. C. Teagle
164—Beatrice
165—Wall D. Munson
167—Hatteras

UNION:

16 and 17—Regulus and Dicto
130—J. W. Van Dyke

132 and 133 and 136 to 139—War Knight, War Monarch, Eagle, Tiger, Talabot, Bessa.
141—George C. Henry
140—Wilhelm Jebsen
142—War Sword

Second: A statement showing the average prices per pound and the total price per ship for all Hull steel in each of the vessels above named; the total hours of labor required to construct each of said ships; the total hours of labor required to construct each ship completed by Bethlehem during the years 1915-1917, inclusive, substantially similar to any of the foregoing ships; the average rate per hour for labor on each of the ships designated in Paragraph 1; and statement of the actual out-of-pocket cost of administrative and general expense and the actual depreciation charged to each of said ships.

Third: A statement showing the total labor, material and operating expenses for the entire work done by Bethlehem at its various shipbuilding plants for the U. S., the Fleet Corporation, or for other persons and corporations during each of the years, 1917, 1918, 1919 and 1920.

We request this information at the present time in order that the proposed hearing may not be delayed.

Very truly yours,

Joseph J. Brown.

JJB:MW

EXHIBIT G-5

June 22nd, 1928.

Mr. W. W. Robison,
Cravath and Henderson,
15 Broad Street,
New York City.

Dear Mr. Robison:

With reference to your letter of May 7th, 1928 to Mr. E. W. Geiss forwarding letter of May 1, 1928 from Mr. Joseph Brown to Mr. Ralph Evans requesting for certain vessels listed therein

1. The Average Price per lb. for all hull steel.
2. The total price per ship for all hull steel.
3. The total hours of labor to construct each of said ships.
4. The total hours of labor to construct each ship completed by Bethlehem during years 1915 to 1917 inclusive—similar to any of the foregoing ships.
5. The average rate per hour for labor on each of the ships designated.
6. Statement of actual out-of-pocket cost of Administrative and General Expense and actual Depreciation charged to each of said ships.
7. Statement showing total labor, material and operating expense for the entire work done by Bethlehem at its various shipbuilding plants for the United States, Fleet Corporation or for

other persons and corporations during each of the years 1917, 1918, 1919 and 1920.

Bethlehem has no records from which above information can be obtained. It was not the practice to maintain such records and while we have attempted to supply the information as requested it is, due to the elapsed time and the absence of records, not considered by us to be accurate nor can it be guaranteed. It has been compiled from various sources and is being submitted for what it is worth.

We beg to comment as follows:

1. *Average price per lb. for all Hull steel.*

The average price of steel was obtained in some cases from invoices still available, in other cases from purchase orders or purchase contracts and still other cases from "accounts payable distribution records" or from any other sources available.

2. *Total price per ship for all Hull steel.*

Total price per ship for all hull steel may be obtained by multiplying the average price shown in (1) by an Engineer's estimate of the steel required, which estimate is shown in the attached papers.

3. *Total hours of labor to construct each of said ships.*

Total hours of labor may be obtained by dividing for each month the direct labor expenditures, which are shown for each hull in the attached papers, by the corresponding average plant earning rate also shown. The average

plant earning rate is the rate of all of the employees in the plant with the sole exception of administrative employees.

From our knowledge it is safe to say that this rate is approximately 3% higher than would be the earning rate of direct employees only. Therefore, for the purpose of obtaining the hours it will be necessary to reduce the average rate shown by 3% of said rate before making division.

4. *Total hours of labor to construct each ship completed by Bethlehem during years* 1915 *and* 1916 *and* 1917.

Hulls 244 and 245 at Fore River are the only two hulls in addition to the list for which said information is furnished.

5. *Average rate per hour for labor on each of the ships.*

Divide total direct labor shown for each vessel by the total hours obtained in (3). This will result in an approximate average direct labor earning rate per hour for each ship. This calculation will show a figure of 38.49 for Hulls 253 and 254 as against an actual rate of 38.75 furnished Mr. Harry Brown by the Accounting Department late in 1917 when time slips, etc. from which the actual rate could be computed were still available.

(The information covered by questions one to five may be obtained from attached exhibits 1-A, 1-C and 1-D covering respectively the Fore River, Sparrows Point and Union Plants.)

6. *Statement of out-of-pocket cost of administrative and general expense and actual depreciation charged to each of said ships.*

This information was previously furnished on statement dated March 25, 1927 and can not be amplified.

7. *Statement showing total labor, material and operating expense * * * work done by Bethlehem * * * for United States, Fleet Corporation or other corporations during each of the years 1917, 1918, 1919 and 1920.*

Exhibit 2 attached reveals this information.

We call your attention to the fact that a large part of the figures furnished are estimated figures made from such records as are available.

In connection with the statement from the Union Plant regarding weight of plates and shapes and average price of same, we call your attention to the fact that the figures stated therein are to be modified as stated in the subsequent telegram from the Works Accountant of that plant dated June 6th; copy of which is enclosed.

Information from the Harlan Plant is not yet complete and will be sent to you shortly.

Very truly yours,

Bethlehem Shipbuilding Corporation, Ltd.
H. G. Smith.
Vice-President

Enclosures: 3 of each.

Exhibit G-6

BETHLEHEM SHIPBUILDING CORPORATION, LTD.

Statement Showing General Characteristics, Dates of Keel Laying and Delivery, Estimated Cost (where available) Actual Cost and Selling Value of Certain Merchant Vessels Delivered During Calendar Year 1917

Item	Vessels delivered January 1, 1917 to June 3, 1917														Vessels delivered August 3, 1917 to December 31, 1917					
	Fore River Plant					Union Plant	Sparrows Point Plant						Union Plant			Sparrows Point Plant			Fore River Plant	
Hull No.	251	252	253	254	255	441	448	156 & 159	164	16 & 17	127	150	152 & 158	136 to 139	141	163	167	14	142	
Name	J. Luckenbach	Rio Lero	Fresno	Virginia	Norge	S.Brewster	Clem	156-Jas.McCue 159-J.C.Tengle	Beatrice	16-Cagnino 17-Dieto	Enid	J.J.VanDyke	152-Earlnight 153-Carlsmarsh	136-Eagle 137-Tiger 138-Trident 139-Sussex	Geo.S.Henry	T.H.Rossum	Hatteras	Wm.Johnson	Van Sweet	
Keel Laid	2/19/16	4/15/16	5/18/16	6/14/16	9/29/16	12/4/15	6/29/16	156 - 3/1/16 159 - 4/27/16	6/1/16	16 - 7/28/16 17 - 11/16/16	6/16/16	6/6/16	152 - 6/25/16 153 - 9/21/16	136-6/20/16 137-10/26/16 138- 7/11/16 139- 9/27/16	11/26/16	11/7/16	5/24/17	4/11/17	1/22/17	
Delivered	1/25/17	2/14/17	6/30/17	7/22/17	6/30/17	5/12/17	6/22/17	156 - 5/27/17 159 - 7/19/17	6/2/17	16 - 5/31/17 17 - 7/28/17	6/7/17	6/7/17	152 - 8/22/17 153 - 7/9/17	136- 6/13/17 137- 6/30/17 138- 1/31/17 139- 2/16/17	6/7/17	9/20/17	12/20/17	10/6/17	8/22/17	
Type of Vessel	Cargo	Pet.Carrier	Tanker	Tanker	Tanker	Tanker	Cargo	Cargo	Cargo	Cargo	Pass.&Cargo	Tanker	Cargo	Cargo	Tanker	Cargo	Cargo	Tanker	Cargo	
Character of Vessel	2K-Shelter	2K-S Island	2K-S Island	2K-S Island	2K-S Island	2K-S Island	1K-S Island	3K-Shelter	1K-S Island	1K-S Island	-	2K-S Island	2K - Shelter	2K - Shelter	2K-S Island	1K-S Island	2K-S Island	2K-S Island	2K Shelter	
Deadweight Tonnage	12,225	8,247	9,050	9,050	4,900	8,100	4,541	14,950	5,908	5,900	10,250	10,575	11,850	11,708	10,475	8,611	7,822	10,380	11,715	
Classification	A.B.S.	Lloyds	Lloyds	Lloyds	Lloyds	Lloyds	Lloyds	Lloyds	Lloyds	Lloyds	Lloyds	Lloyds	Lloyds	Lloyds	Lloyds	Lloyds	Lloyds	Lloyds	Lloyds	
Estimated Cost																				
Material	$427,490.00	$278,300.00	$345,000.00	$345,000.00	$210,000.00	$266,300.00	$177,000.00	-	-	-	700,607.00	-	-	-	-	-	-	-	-	
Labor	195,548.00	180,300.00	212,000.00	212,000.00	121,000.00	199,000.00	123,350.00	-	-	-	683,821.00	-	-	-	-	-	-	-	-	
Actual Cost																				
Material	$423,625.88	$322,890.19	$288,566.48	$305,036.61	$221,390.58	$216,760.34	$166,179.56	$1,125,024.26	$226,430.99	$ 289,838.23	$ 969,783.60	$ 807,365.92	$2,161,080.46		$ 246,808.40	$ 313,232.92	$379,845.51	$ 556,804.41	$ 658,244.14	
Labor	280,981.18	220,152.84	225,621.92	225,621.20	202,459.26	221,205.25	162,444.35	902,056.91	148,437.10	507,465.70	642,842.94	284,858.44	2,151,490.88		218,606.09	258,315.43	258,756.58	218,606.09	298,687.03	
Expense (Operating)	142,279.86	112,295.13	149,825.20	149,295.00	100,790.46	229,025.02	90,725.82	452,792.62	86,620.25	137,306.06	189,077.25	71,580.64	487,691.00		68,521.47	123,694.58	121,671.71	65,521.47	64,814.15	
A & G Expense	51,416.09	39,524.37	51,825.42	51,597.77	32,048.42	49,800.00	25,176.16	149,152.64	28,590.50	80,077.85	104,501.63	54,917.78	346,815.93		54,450.04	40,580.57	45,017.45	54,450.04	41,302.97	
Depreciation	24,277.40	28,214.28	34,548.25	34,548.25	21,268.51	22,200.00	16,784.21	99,624.24	19,040.00	55,285.28	92,617.78	34,621.80	221,323.28		27,428.26	27,028.72	30,011.48	27,428.24	40,448.48	
Total	$942,628.38	$720,976.78	$930,056.07	$965,959.09	$687,554.83	$949,990.73	$661,568.30	$2,772,961.17	$509,139.15	$1,468,023.85	$2,918,683.17	$1,009,374.60	$5,316,093.11		$1,036,917.26	$ 742,377.22	$1,015,319.26	$1,036,917.26	$1,123,496.86	
Selling Price																				
Contract Price	$725,000.00	$455,000.00	$755,000.00	$755,000.00	$525,000.00	$670,000.00	$485,000.00	$2,150,000.00	$480,000.00	$1,220,000.00	$1,840,000.00	$ 900,000.00	$4,793,117.00		$1,500,000.00	$ 730,000.00	$922,500.00	$1,085,000.00	$1,[illegible],000.00	
Changes & Extras	6,828.50	10,900.00	28,842.90	150,526.80	3,678.85	61,745.97	11,999.31	45,400.80	17,401.96	24,057.60	99,706.12	38,295.00	38,096.42		10,858.78	55,570.00	48,874.27	38,760.44	23,427.80	
Wage Increase																				
Overtime paid workmen			Included in Chge.&Extras	Included in Chge.&Extras																
Overtime Co-efficient																				
Bonus Tonnage																				
Other Extras																				
Total	$731,828.50	$465,900.00	$783,842.90	$905,526.80	$528,678.85	$731,745.97	$496,999.31	$2,195,400.80	$497,401.96	$1,244,057.60	$1,939,706.12	$1,018,295.00	$4,831,213.42		$1,510,858.78	$ 785,570.00	$971,374.27	$1,123,760.44	$1,[illegible],427.80	
Hours of Labor																				
Average Rate (Earnings per pay hour)			28.75 cts.	36.75 cts.																

EXHIBIT G-7

(Copy)

Subsidiary Companies of Bethlehem Steel Corporation
Quincy, Mass.

May 29, 1928.
File Reference
ACA-32.10-349

From H. A. Brecht, Works Accountant
To F. A. Shick, Comptroller.
Subject Bethlehem v. Fleet Corporation

Reference (a) BFB-2759-C—5-21
(b) BFB-2761-C—5-22

Enclosure: (1) Copy of letter from Estimating Department showing estimated gross weights of plates and shapes

(2) Detail of Plates & Shapes Purchased

(3) Average Plant Labor Rates & Direct Labor Charges

1. Enclosures are submitted in quintuplicate as requested in reference (a).

2. Please note the comments contained in enclosure (1). We are also advised that the quantities stated for each of the vessels are relatively consistent, based on the size and type of the vessel.

3. Enclosure (2) was prepared from A/P Distribution records which we were able to locate. The weights of the material charged for in the different invoices listed in this record, appear in the left hand

margin of the sheets, indicating that somebody had at some time developed similar information or at least determined the quantities of steel charged to the vessels. In all cases the quantities shown represent the total as indicated by our A/P Distribution records with the exception of that shown for Hull 251. We were unable to find A/P Distribution Sheets showing charges to Hull 251 subsequent to December 1915. The cost ledger indicates purchased material charged in minor amounts in months following December 1915. Whether any appreciable portion of these amounts cover Plates and Shapes we cannot say. However, we feel reasonably safe in saying that the amount and value of steel shown for Hull 251 is between 95% and 100% of the total. It is possible that A/P Distribution Records subsequent to December 1915 could be located with further search, but our efforts to date have been non-productive.

4. The information contained in enclosure (3) was developed from a combination of two records maintained in memorandum form, during the period these vessels were under construction. One of these records contained a summarization of the amount of the payrolls by departments, the other record evidently was developed for use in connection with the determination of the quantity of incentive work carried on in the Yard, however, it contained the total hours by departments. We were able to obtain the total hours for the Plant from the second record, which divided into the total amount of the payroll for the Plant, taken from the first record, gave us the average plant rate indicated in enclosure (3).

5. We believe all of the information contained in the attached statements is reliable, and, so far as we

know, we have carefully followed your suggestions in the determination of the various items of information.

6. So far as we are able to determine, no regular records showing weight, price and value of hull steel, hours and rates of labor on stated hulls were ever maintained at this Plant prior to current times. However, there are indications in our records pertaining to hull steel, that information along these lines must have been developed from time to time, probably in special instances at the request of the Management. In the case of the particular hulls mentioned in this letter, the A/P Distribution Sheets indicate that the quantities of steel were entered currently with the values. Whether any reports of totals were developed from this information cannot be determined.

7. In the recollection of some of the older members of our organization, the hours and labor on specific hulls were asked for and developed at different times, but evidence of this cannot be located in the records we have been able to find. Such statements were probably prepared at the request of the different members of the operating organization and were quite likely submitted in memorandum form and no copies kept in the accounting files.

(Sgd) H. A. Brecht,
Works Accountant.

EXHIBIT G-8

Subsidiary Companies of Bethlehem Steel Corporation
Quincy, Mass.

May 25, 1928

From: H. H. Schulze
To: H. A. Brecht
Subject: Bethlehem v. Fleet Corp'n

Referring to letter dated May 21st, BFB-2759-C, from Mr. Geiss to you, there is given herewith a statement of the gross plates and shapes for the several Fore River Hulls, referred to in his letter.

These amounts were obtained from the most reliable sources available, namely, the schedules from which the material was ordered by the Hull Drawing Room and the results are as totalled by them.

Comparing the gross weights with the best available record for net weights, show the reasonable wasteage and, therefore, the figures quoted herein can be considered as correct.

Statement of the gross plates and shapes for Job 12 or its equivalent is:

Hull			
253 & 254 each	5,198,420	2,124,018	7,322,438
251	5,594,848	2,231,936	7,826,784
255	2,812,278	1,133,071	3,945,349

(Signed) H. H. Schulze

EXHIBIT G-9

DETAIL OF PLATES AND SHAPES PURCHASED
Hulls 251, 253, 254, 255

Month	Hull 251 Weight	Hull 251 Average Price	Hull 251 Amount	Hull 253 Weight	Hull 253 Average Price	Hull 253 Amount	Hull 254 Weight	Hull 254 Average Price	Hull 254 Amount	Hull 255 Weight	Hull 255 Average Price	Hull 255 Amount
1915												
August	2,032,119		26,833.44									
Sept.	4,703,987		60,661.11									
Oct.	1,234,402		16,966.93									
Nov.	459,034		6,859.03	61,763		946.91	56,471		772.33			
Dec.	87,673		940.98	90,941		1,250.14	90,931		1,250.14			
1916												
Jan.				821,199		13,918.20	881,198		18,918.20	75,436		1,131.37
Feb.				1,796,408		24,897.25	1,796,946		34,896.73	279,824		4,114.03
March				2,313,933		32,384.75	2,312,536		32,379.35	178,772		2,628.93
April				1,435,535		20,603.49	1,453,525		20,802.61	565,137		9,077.75
May				637,194		12,389.46	638,201		12,389.55	2,295,979		37,471.94
June				217,536		4,337.55	217,536		4,537.51	738,109		11,982.53
July				168,608		3,390.34	168,609		3,390.58	59,352		973.14
August				57,393		1,156.85	57,391		1,155.87	52,200		845.25
Sept.				95		1.30	95		1.39	20,633		334.42
Oct.				39,295		972.65	39,295		972.65			
Nov.				785		10.71	785		10.70			
	8,518,015	.0132	112,061.49	7,638,685	.0151	115,459.60	7,633,519	.0151	115,277.31	4,265,442	.0161	68,553.36

EXHIBIT G-10

May 28, 1928

AVERAGE PLANT LABOR RATES AND DIRECT LABOR CHARGES

Hulls 244-5, 251, 253, 254, 255

Month	Plant Labor Rates	Hull 244-5	Hull 251	Hull 253	Hull 254	Hull 255
Feb. 1915	.316258	1,986.41				
Mar.	.315093	5,783.35				
Apr.	.318528	11,435.17				
May	.317424	18,704.10				
June	.320473	23,152.05				
July	.319688	38,686.78	1,229.66			
Aug.	.318895	38,666.89	796.26			
Sept.	.322245	53,915.71	1,136.05	344.53	344.53	
Oct.	.322365	50,731.63	1,168.72	277.54	377.54	
Nov.	.324030	54,129.47	1,595.85	441.62	441.63	73.84
Dec.	.327499	67,127.71	2,456.47	1,461.84	1,461.83	1,601.61
Jan. 1916	.328124	52,805.44	5,272.70	1,869.69	1,869.68	1,655.22
Feb.	.331553	47,872.66	8,830.97	2,185.68	2,185.65	1,952.89
Mar.	.329914	24,839.11	8,635.76	1,833.30	1,833.30	2,530.08

Exhibit G-10

Month	Plant Labor Rates	Hull 244-5	Hull 251	Hull 253	Hull 254	Hull 255
Apr.	.332690	8,324.84	8,120.53	1,974.71	1,974.67	1,171.25
May	.342967	289.02	10,690.16	2,824.50	2,824.45	1,411.58
June	.353795	8.11	13,226.80	2,929.07	2,929.04	1,762.44
July	.360991		21,705.80	2,965.12	2,965.09	1,617.30
Aug.	.363867		36,233.83	8,187.95	8,187.95	2,952.23
Sept.	.357562		33,192.64	9,060.18	9,060.21	3,536.88
Oct.	.355968	13.19	32,454.09	9,644.14	9,644.11	7,412.75
Nov.	.361269		46,343.83	14,786.20	14,786.25	15,360.09
Dec.	.396510		24,741.89	16,839.91	16,839.90	16,250.13
Jan. 1917	.397973		21,941.81	22,259.96	22,259.88	31,032.36
Feb.	.396018		247.64	20,050.37	20,050.30	31,357.82
Mar.	.403187		103.84	20,094.19	20,094.15	46,885.24
Apr.	.399937		160.57	24,961.36	24,961.30	32,562.92
May	.411205		202.72	52,889.10	52,889.07	1,326.29
June	.419312		.80.36	65,748.58	65,748.46	6.34
July	.412517		160.68	40,586.35	40,585.20	
Aug.	.418737		200.75	1,317.03	1,317.01	
Total		498,471.64	280,931.18	325,631.92	325,631.20	202,459.26

Exhibit G-10

EXHIBIT G-11

Subsidiary Companies of Bethlehem Steel Corporation
Baltimore, Md.

June 9, 1928

From E. W. Smith, Works Accountant,
Baltimore Plant
To F. A. Shick, Comptroller.
Subject Bethlehem v. Fleet Corporation.

Reference (a) Your Letter BFB-2759-C dated May 21st. Hulls 4158 and 4159, 4163, 4164 and 4167.

(b) Your Letter BFB-2761-C dated May 22, 1928.

(c) Your Letter BFB-2670-C dated June 4, 1928.

a-1. (a) Average price per pound for all Hull steel.

(b) Total price per ship for all Hull steel.

As explained to you during our conversation relative to the above mentioned subject several weeks ago, that at the time the Bethlehem Steel Company purchased the Maryland Steel Company or at some date after said purchase it was decided not to compile Finished Cost Books in the same manner as compiled by the Maryland Steel Company, and that it was not finally decided by your office to compile certain information to be used on our Summary of Costs, until we started to construct Hulls 4201 and 4202.

We have been successful after considerable effort in locating Material Cost Summaries, which we told you during course of conversation that we thought some one had compiled without the knowledge of Home Office, but destroyed due to same not being a part of our accounting procedure. We are giving below, information requested in paragraph a-1 (a) and (b), but find that we cannot support this information with any of the original records, meaning, Accounts Payable Vouchers, Material Requisitions nor Monthly Compilations of same, which were used in compiling this record, as you no doubt know it has always been the policy of our Company to destroy the majority of our records, after reasonable period of time, before we contracted to construct Hulls for the Emergency Fleet Corporation due to lack of storage facilities.

We have discovered in comparing total amount of Job twelve as shown on these Material Cost Summaries that the following differences exist between said summaries and our Cost Ledgers, but due to them not being of any great variance as you can note, we do not think that our figures would change considerable if we were successful in identifying these amounts as to Hull steel and other materials charged to this job number.

Hull No.	Job No.	Ledger Cost	Material Summary Cost	Difference
4158-4159	12	534,402.86	536,440.26	*2,037.40*
4163	12	118,823.67	125,090.17	*6,266.50*
4164	12	97,488.81	97,488.81	
4167	12	159,201.86	137,149.54	22,052.32

Hull No.	Job No.	Gross Weight Hull Steel Plates and Shapes	Price per Ship Hull Steel (Cost Delivered)	Average Price per Pound Hull Steel
4158-4159	12	23,161,328	425,683.02	.0184

Hull No.	Job No.	Gross Weight Hull Steel Plates and Shapes	Price per Ship Hull Steel (Cost Delivered)	Average Price per Pound Hull Steel
4163	12	5,443,088	110,518.92	.0203
4164	12	3,185,937	82,033.44	.0257
4167	12	4,858,901	128,621.33	.0265

a-1. (c) Total hours of Labor Required to Construct.

(d) Average Rate Per Hour for Labor. Statement Attached.

As explained to you in previous paragraph of letter, that the compiling of the weight and value of Hull steel was not started until we secured contracts to construct Hull 4201-2, this same condition prevailed relative to hours. The construction of Hulls 4158-4159 were started in October 1915, from that date to June 30, 1916, which was during the period of Maryland Steel Company, ownership, we have been successful in accumulating labor cost from one of their ledgers now in our possession. You will also note, on our statement, Hulls 4163-4164 and 4167 show labor amounts in certain months during same period. This information was taken from same source.

In reviewing our records in an endeavor to establish plant earning rate for period October 1st, 1915 to June 30th, 1916, we find it impossible to locate pay-rolls. But we have been successful in locating in the files of the former General Manager, analysis of these pay-rolls from which we have established said rates for the months from October 1915 to December 1915, inclusive. For the months of January to May 1916, we were compelled to establish said

rates from another record of same source captioned "Productive Hours and Wages."

But were compelled for the month of February, 1916 to correct hours as shown in three of the departments due to them not comparing with monies paid. The corrected hours were established by dividing the average rate for the same department for the previous month into the monies paid. Salaries paid administrative employees have been eliminated.

We also have in our possession from October 1st, 1915 to April 30, 1916 total pay-roll earnings which compare very favorable with figures in compiling rates. This record does not show hours.

For the month of June, 1916, being unable to locate any pay-roll hours or monies we have used May 1916 rate.

In establishing monthly rates for July 1916 up to and including December 1916, due to our pay-rolls being destroyed for this period we were compelled to compile day work hours and amounts from Departmental distribution books which we have in our possession. Piece Rate Ledgers were not retained and in establishing hours to support amounts paid, which we compiled from above mentioned distribution books we were compelled to use as a base piece work hours and money shown on our Pay-Roll Summary for the month of January, 1917. Endeavoring to take into consideration the same percentages of increase departmentally as day workers rates reflect.

January, February and December 1917 rates were taken from copies of Pay-roll Summaries forwarded

from your office. March to November 1917 inclusive monthly rates were taken from records used when compiling increased labor cost on commandeered Hull, which said records being identical to Pay-roll Summaries which we cannot locate.

E. W. Smith,
Works Accountant.

EXHIBIT G-12

BETHLEHEM SHIPBUILDING CORPORATION, LTD.
BALTIMORE PLANT

Subject: Bethlehem v. Fleet Corporation

Reference: A—Mr. F. A. Shick, Comptroller's Letter BFB- 2759-C Dated May 21st.
B—Mr. F. A. Shick, Comptroller's Letter BFB-2761-C Dated May 22nd.
C—Mr. F. A. Shick, Comptroller's Letter BFB- 2670-C Dated June 4th.

A-1 C & D Direct Labor cost by months

			Hull Nos.							
		Monthly	4158-9		4163		4164		4167	
Year	*Month*	*Rate*	*Amount*	*Hours*	*Amount*	*Hours*	*Amount*	*Hours*	*Amount*	*Hours*
1915	October	.2391	50.73							
"	November	.2394	1,146.81							
"	December	.2437	1,834.36							
1916	January	.2414	2,363.61				156.55			
"	February	.2618	6,271.18				666.25			
"	March	.2613	11,065.32				1,166.32			
"	April	.2657	14,967.20		83.02		677.08			
"	May	.2698	29,489.38		486.18		1,813.11			
"	June	.2698	35,720.79		246.54		2,322.47			
"	July	.2855	32,418.19		616.91		2,430.92		506.28	

Exhibit G-12

1743

			Hull Nos. 4158-9		4163		4164		4167	
Year	Month	Monthly Rate	Amount	Hours	Amount	Hours	Amount	Hours	Amount	Hours
"	August	.2817	48,164.39		1,078.53		4,269.05		291.79	
"	September	.2883	42,018.74		1,173.63		6,821.71		709.61	
"	October	.2853	87,020.82		2,485.64		13,813.58		797.40	
"	November	.2905	90,439.04		4,574.14		12,849.39		171.73	
"	December	.3124	68,123.32		5,411.75		10,922.27		227.82	
1917	January	.3096	92,232.57		10,706.55		22,870.03		621.11	
"	February	.3120	70,990.70		9,368.45		32,522.02		1,357.26	
"	March	.3105	99,144.55		11,832.02		49,048.92		3,448.54	
"	April	.3164	64,915.18		16,847.63		1,054.36		3,136.29	
"	May	.3355	59,834.53		23,998.60		53.07		5,435.49	
"	June	.3355	41,222.15		24,696.73				6,851.38	
"	July	.3373	2,568.33		35,908.12				8,532.85	
"	August	.3524			43,743.65				15,414.99	
"	September	.3635	53.02		39,714.88				26,491.47	
"	October	.3732			162.70				50,763.02	
"	November	.3810			155.38				79,402.36	
"	December	.3984			34.38				34,596.19	
	Total		902,056.91		233,325.43		163,457.10		238,755.58	

EXHIBIT G-13

June 1, 1928,
ACA-2300.

J. Sidney Lewis, Works Accountant.
F. A. Shick, Comptroller.
Bethlehem v. Fleet Corporation.

Reference: Your letter BFB-2759-C of 5-21-28
" " BFB-2761-C of 5-22-28

Enclosures: Exhibit A—Direct Labor Cost on Hulls by months and Plant Earning Rates for each month.
" B—Comparison of weights of Plates and Shapes and average price of same.

Copy of letter from U. S. Steel Products Co. to Purchasing Agent, Union Iron Works Co. supporting statement on Exhibit B—Hull 16.
Copy of letter from Purchasing Agent, Union Iron Works Co. Potrero to Purchasing Agent, Union Iron Works Co., Alameda. Supporting Statement on Exhibit B—Hull 16.

I am enclosing herewith the information requested in Exhibit A, showing Direct Labor Costs by months and Plant Earning Rates for each month we were unable to find any records compiled at the time of construction giving the hours and rates of labor, therefore, we have obtained the necessary figures from various sources, and believe them to be absolutely correct.

No definite figures are obtainable as to the weights and average price of Plates & Shapes, but on Exhibit B, we have done the best we can with the records available and on this statement we show the source of information for all our figures. We checked these with our Hull Drafting Department and believe them to be as nearly correct as it is possible to be considering the incomplete records at our command.

J. S. Lewis,
Works Accountant.

Encl.

EXHIBIT G-14

Nov. 9th, 1916

Mr. H. Speed,
Purchasing Agent,
Alameda Branch

Dear Sir:—

Herewith find bill in duplicate for the U. S. Steel Products Company dated October 16th, their Invoice No. D-10263 in amount of $1003.84, being the extra cost of the excess tonnage supplied by them for Hull No. 16 as required by our revised order list as compared with the original order placed by the United Engineering Works through the Pacific Hardware & Steel Company. We have checked over the weights carefully and find the same to be approximately correct. The charge of $6.00 per ton for the excess tonnage is also correct—You may, therefore, pass

this bill to their credit, charging the same to your order for the material for Hull #16.

Yours truly,
Union Iron Works Co.,
By
Purchasing Agent.

EXHIBIT G-15

United States Steel Products Co.
San Francisco, Cal.

Mar. 23, 1916

Mr. M. P. Geirrine, Purchasing Agent,
Union Iron Works Co.,
San Francisco, Calif.

Dear Sir:

Referring to conversation with you regarding revised specifications which you gave us for Hull No. 16 for which order was originally given us by Pacific Hardware & Steel Co., the revised specifications called for a tonnage heavier than that provided for on the list originally furnished us by Pacific Hardware & Steel Co. In order to provide for the price on this excess tonnage, we will, as arranged with you, bill the entire tonnage to Pacific Hardware & Steel Co., at price originally agreed upon. We will charge one of your contracts with the excess tonnage and will render you a bill for the difference between the price at which material was originally sold and contract price against which the excess tonnage is applied. This we understand is entirely satisfactory to you.

Yours truly,
United States Steel Product Company
Richard B. Carr,
Mgr. of Sales.

EXHIBIT G-16

DIRECT LABOR COST ON HULLS BY MONTHS
AND
PLANT EARNING RATES FOR EACH MONTH

Exhibit A

Year	Month	Plant Rate	Hulls 16 & 17	Hull 130	Hulls 132-3-6-7-8-9	Hulls 140 & 141	Hull 142
1915	December	.3899		80.29	112.95		
1916	January	.3910		201.03	2,952.30	20.74	
	February	.3822		687.76	4,407.51	186.84	
	March	.3757	1,699.16	802.53	5,931.05	252.63	
	April	.3907	1,338.48	2,086.91	7,542.33	845.55	
	May	.3902	2,365.08	4,439.80	8,791.72	692.58	
	June	.3896	10,390.67	7,941.04	634.30	719.12	
	July	.3858	14,137.14	17,561.81	54,443.06	748.39	107.81
	August	.3942	16,158.84	29,407.70	69,659.23	1,271.51	155.28
	September	.3906	21,274.29	44,083.53	95,862.96	1,370.83	76.94
	October	.3966	28,147.67	74,023.29	182,255.89	1,761.09	197.58
	November	.3924	30,434.62	60,184.60	179,341.22	3,633.79	940.69
	December	.3847	42,615.59	53,473.72	267,624.40	14,144.46	2,760.53
1917	January	.3937	46,011.13	31,905.49	252,766.71	15,085.39	6,965.21

Year	Month	Plant Rate	Hulls 16 & 17	Hull 130	Hulls 132-3-6-7-8-9	Hulls 140 & 141	Hull 142
	February	4015	55,868.38	9,215.08	221,326.63	45,732.77	12,573.04
	March	4015	52,199.61	765.85	239,665.80	78,518.56	13,699.36
	April	4104	56,499.57		270,267.70	98,094.62	46,657.21
	May	4246	52,943.29		141,439.26	91,106.58	65,522.72
	June	4196	38,848.63		80,383.19	76,796.43	77,782.88
	July	4355	34,398.37		28,212.48	85,687.07	59,266.18
	August	4273	2,062.31			66,824.83	11,951.60
	September	4541	15.65			29,024.13	
	October	4864	52.50			5,396.45	
	November	4879				6,724.83	
	December	6058	5.87			404.85	
1918	January	6024	18.84			538.66	
	February	6038				108.03	
	March	5050				108.04	
	April	6039				171.30	
	June	6072				42.00	
			307,465.70	336,858.43	2,131,490.68	637,012.17	298,657.03

Exhibit G-16

1749

EXHIBIT G-17

WESTERN UNION

(Copy)

N13 413 NL 1-146-San Francisco, Calif June 6

E W GEISS

BETHLEHEM SHIPBUILDING CORPORATION LTD BETHLEHEM PENN

EIGHTY FOUR YOUR FOURTEEN PRICES SHOWN DO NOT INCLUDE FREIGHT ON ANY HULLS STOP ALL STEEL SOLD FOB MILL OR PITTSBURG STOP ADD FOR FREIGHT PER ONE HUNDRED POUNDS HULLS SIXTEEN AND SEVENTEEN SIXTY FIVE CENTS STOP HULL ONE THIRTY-THREE THIRTY NINE THOUSAND FOUR FORTY POUNDS AT SIXTY FIVE CENTS BALANCE AT SEVENTY FIVE CENTS STOP HULL ONE THIRTY TWO TO ONE THIRTY NINE THIRTY THREE MILLION ONE SEVENTY SIX THOUSAND FIVE HUNDRED FIFTY POUNDS AT SIXTY FIVE CENTS BALANCE SEVENTY FIVE CENTS STOP HULLS ONE FORTY AND FORTY ONE NINE MILLION NINE HUNDRED THREE THOUSAND FIVE FORTY EIGHT POUNDS AT SEVENTY FIVE CENTS BALANCE SIXTY FIVE CENTS STOP HULL ONE FORTY TWO ALL SEVENTY FIVE CENTS STOP EXPLANATION ABOVE RATES STEEL MOVED FROM DIFFERENT EASTERN POINTS AND ALSO RATES WERE CHANGED DURING PERIOD OF SHIPMENT STOP STEEL OR-

DERS FOR HULL ONE THIRTY WERE PLACED WITH U S STEEL NOVEMBER AND DECEMBER NINETEEN FIFTEEN AT PRICE ON DOLLAR FORTY BASE PER ONE HUNDRED POUNDS AND SMALL ADDITIONAL ORDER IN MARCH NINETEEN SIXTEEN AT PRICE ONE DOLLAR EIGHTY BASE PER ONE HUNDRED POUNDS STOP STEEL ORDERS FOR HULL SEVENTEEN WERE NOT PLACED WITH U S STEEL UNTIL FEBRUARY NINETEEN SIXTEEN AND PLACED AT ONE DOLLAR EIGHTY BASE AS THE EARLIER U S STEEL CONTRACTS HAD BEEN FILLED WHEN THESE ORDERS WERE PLACED STOP THIS WILL EXPLAIN DIFFERENCE IN PRICE OF HULLS SEVENTEEN AND ONE THIRTY STOP ORDERS FOR HULL SIXTEEN STEEL HAD ALREADY BEEN PLACED BY UNITED ENGINEERING COMPANY WITH PACIFIC HARDWARE COMPANY BEFORE BETHLEHEM TOOK OVER PLANT STOP CHANGE AVERAGE RATE ON THIS HULL TO READ ONE DOLLAR SEVENTY THREE WEIGHT REMAINS SAME STOP EXPLAINING CHANGE WOULD SAY WE HAVE DISCOVERED SOME DUPLICATE INVOICES FROM PACIFIC HARDWARE IN OLD CORRESPONDENCE FILE WHICH SHOWS THAT PRICE OF STEEL AS BILLED US BY ABOVE FIRM WAS ONE DOLLAR SIXTY FIVE BASE PER ONE HUNDRED POUNDS FOB PITTSBURGH WHICH WITH EXTRAS WOULD MAKE AVERAGE PRICE ONE DOLLAR SEVENTY THREE STOP HULL ONE THIRTY USE LEDGER COST STOP BALANCE OF HULLS OPTIONAL WITH YOU TO USE EITHER PUR

CHASE ORDER INVOICE OR DRAFTING ROOM COLUMNS STOP WEIGHTS ON DRAFTING COLUMN INCLUDE PLATES AND SHAPES SUPPLIED FROM OUR LOCAL STOCK AND BELIEVE THIS IS MOST CORRECT ESTIMATE OF STEEL ACTUALLY CHARGED TO HULL EQUIVALENT TO JOB TWELVE STOP ARRIVED THIS MORNING AND HAVE GONE INTO THIS MATTER AND CANNOT SEE THAT WE CAN POSSIBLY GIVE YOU ANY FURTHER INFORMATION STOP MY MEN HAVE WORKED VERY HARD ON IT

J. SIDNEY LEWIS.

EXHIBIT G-18

COMPARISON OF WEIGHTS OF PLATES AND SHAPES AND AVERAGE PRICE OF SAME

	From Cost Ledger		*From Purchase Orders*		*From Invoices Obtainable*		EXHIBIT B
	Weight in Lbs.	*Average Rate*	*Weight in Lbs.*	*Average Rate*	*Weight in Lbs.*	*Average Rate*	*Weights from Hull Draft—Room*
Hull 17	Books cannot be found		Purchase orders cannot be found		4,355,072	1.864	*Weight in Lbs.*
Hull 16	Books cannot be found		Purchase orders cannot be found		4,355,072	1.587	4,321,091
			(*Note*—The only orders which can be found on these Hulls are for a very small quantity of additional plates and shapes for Hull 17 placed at a price of 2.60 base plates and 2.40 base shapes.		From copies of correspondence attached you will note that Pacific Hdwe. & Steel Co. must have taken the order for plates and shapes. Hull 16 at a price of $1.50 per 100 lbs. base which is $6.00 per ton less than we had to pay for the excess tonnage. No invoices can be found for Hull 16.		4,321,091
Hull 130	7,728,757	1.477	7,758,561	1.475	6,927,169	1.50	7,769,600
					(*Note*—All Invoices evidently cannot be found as weights obtained do not agree with Cost Ledger and Purchase Orders.		
Hulls 132-3-6-7-8-9	Alameda Books cannot be found Cost kept at Potrero shows only a small portion of cost.		40,204,203 (*Note*—This weight is lower by 1,794,014 lbs. than the weight furnished by us in answer to your telegram. We find that a Purchase order showing the above weight of shapes ordered for Hull 139 was not intended to be used on that Hull and above shapes were used on another Hull. Also weight shown above would not include liners and does not include weight of plates and shapes which were used in Hull and supplied from our own stock.	1.67	39,672,701	1.69	43,142,410 (*Note*—This weight includes 834,000 lbs. liners which were not included in B/M's. but were evidently ordered later, and do not show in our weight of plates and shapes from Purchase Orders. The balance left over would represent material supplied from our own stock.
Hulls 140-141	13,132,882 This figure is evidently incorrect. There is a posting of 525,985 lbs. plates $66,426.68. We believe this should read 3,525,985 lbs., $66,426.68, which would raise the weight up to 16,132,882 lbs. The books also show that job was credited with plates and shapes left over when vessels were completed in the amount of $61,778.99. Vo. 134, but this voucher does not show weight of plates and shapes credited.	2.4049	15,775,698	2.21	15,549,897	2.23	15,539,200
Hull 142	Books cannot be found		6,691,240 (*Note*—This weight would not include liners and does not include weight of plates and shapes which were used on hull and taken from our own stock.	3.19	6,691,240	3.244	7,190,400 (*Note*—This weight includes 139,000 lbs. liners which were not included in B/M's and were evidently ordered later and do not show in our weight of plates and shapes from Purchase Orders. The balance left over would represent material taken from our stock.

EXHIBIT G-19

BETHLEHEM SHIPBUILDING CORPORATION, LTD.

New York, N. Y. Oct. 25, 1928.

Mr. W. W. Robison,
15 Broad Street,
New York City.

Dear Mr. Robison:

With reference to your letter of October 11th, 1928 addressed to Mr. Geiss, of which a copy was sent me, calling our attention to a question raised by representatives of the Fleet Corporation as to a discrepancy between the quantity of plates and shapes for JOB 12 for Hulls 253-4 mentioned in a memorandum from Mr. Schulze to Mr. Brecht on May 25, 1928, and the quantity appearing in a statement "DETAIL OF PLATES AND SHAPES PURCHASED" dated May 28th, 1928 which was Exhibit 1-A attached to my letter of June 22nd, 1928 and also Exhibit "E" attached to my letter of August 8th, 1928, we beg to state that an analysis of this subject shows that the weights given in Mr. Schulze' report to Mr. Brecht are the estimated weights taken from the schedules prepared in the drafting room whereas the weights contained in Exhibit "E", attached to my letter of August 8, 1928, is the gross invoiced weights of plates and shapes for JOB 12 as taken from the records. This gross weight includes plates and shapes ordered for other miscellaneous purposes and which at the time they are ordered are charged into JOB 12 and ultimately

credited to job 12 as they are charged out against specific jobs.

We find that this correction, in the case of Hulls 253-4, amounted to 326,113 lbs. Deducting this from the 15,272,014 lbs. gross weight leaves a remainder of 14,945,901 lbs. as compared with the calculated schedule weight of 14,644,876 lbs. or a difference of 301,025 lbs. or about 2% of the estimated weight. This can be easily accounted for by the mill tolerances.

As a result of the above, the figures for Hulls 253-4 on Exhibit "E" should be modified. Also we find on this same exhibit in rechecking Hulls 244-5 and 268-9 a few discrepancies which we have corrected. These hulls have been also corrected for credits similar to that on Hulls 253-4 for plates and shapes transferred to other accounts.

A revised sheet, exhibit "E", dated October 25, 1928 is hereto attached.

There has been omitted from this sheet, figures for Hulls 1376-1381. The break-down for these Hulls slightly modifies the old Exhibit "E" and new exhibit is attached to my letter of this date which answers your letter of September 25, 1928.

Very truly yours,

Bethlehem Shipbuilding Corporation, Ltd.

H. G. Smith,
Vice President.

EXHIBIT G-20

Revised Exhibit "E"

BETHLEHEM SHIPBUILDING CORPORATION, LTD.
Fore River Plant

COMPARATIVE COST OF JOB 12 MATERIALS,
Hulls 244-5, Hulls 253-4 and 268-9

	244-5 Weight		Amount
Plates and Shapes	14,785,433#	.0130	$193,115.39
All other Material			43,955.33
Total Material			$237,070.72

	253-4 Weight		Amount
Plates and Shapes	14,945,901#	.0152	$226,832.19
All other Material			78,919.05
Total Material			$305,751.24

	268-9 Weight		Amount
Plates and Shapes	14,764,471#	.0226	$335,087.31
All other Material			62,724.69
Total Material			$397,812.00

Quincy, Mass 8/2/28.
Revised 10/25/28

EXHIBIT G-21

July 6th, 1928

Ralph B. Evans, Esquire,
1335 Land Title Building,
Philadelphia, Penna.

Re: U. S. — Bethlehem Litigation.

Dear Mr. Evans:

In pursuance of our conversation with you of yesterday, the Government would like to have the following information if Bethlehem is willing to furnish the same at this time:

1. Schedule of all items included in "Job 12" with respect to Fore River Hulls 244, 245, 253, 254, 268, 269, 1376 to 1381 inclusive and Sparrows Point Hulls 158 and 159.

2. Copies of all invoices, contracts, orders, etc. relating to "Job 12" materials used in connection with the construction of the foregoing ships, excluding Hulls 1376 to 1381.

3. Statement showing the actual respective costs of steel and other materials included in "Job 12" in connection with the construction of the foregoing ships, including Hulls 1376 to 1381.

4. Copies of all contracts, agreements, options, etc. in existence December 19th, 1917 relating to materials included in "Job 12" as well as all other materials.

5. Brown's estimate as to the total cost of armed guard equipment and war zone requirements to be

furnished for tankers of 9100 and 14950 d. w. t., as well as the respective costs of labor and materials in connection therewith.

6. Brown's estimate as to the respective costs of hotel equipment and navigation outfit to be furnished for the tankers of 9100 and 14950 d. w. t.

7. Brown's estimate as to the cost of "other contingencies" relating to the construction of tankers of 9100 and 14950 d. w. t.

8. The nature of the "other contingencies" included in Brown's estimate with respect to these ships.

9. Explanation of the discrepancy between Brown's estimate as to the cost of all materials required for the construction of a tanker of 9100 d. w. t. and the actual cost of such materials with respect to Hulls 1376 to 1381 inclusive.

With respect to the depositions of Messrs. Powell and Brown, in view of their expected absence during the balance of this summer, we will postpone this matter for the present. We will appreciate it, however, if you will kindly let us know when they return from their vacations, in order that the Government may then proceed in the matter without further delay.

Very truly yours,

Joseph J. Brown.

JJB:MW

EXHIBIT G-22

COPY

Cravath, DeGersdorff, Swaine & Wood
15 Broad Street

New York, August 8, 1928.

U. S. v. Bethlehem Shipbuilding Corporation, Ltd.

Dear Mr. Frick:

With further reference to Mr. Brown's letter to Mr. Evans of July 6, requesting certain information, I send you herewith to be furnished to Mr. Brown a copy of a letter of today's date from Bethlehem Shipbuilding Corporation, Ltd., to me, together with Exhibits A, E and F referred to therein.

I am sending you under separate cover the three volumes of invoices referred to in our client's letter as Exhibits B, C and D. Exhibit C contains invoices for "Job 12 material" for hulls 253 and 254, in addition to the Carnegie invoices for plates and some shapes for those hulls, photostatic copies of which I sent you on the 2nd instant. The invoices which I am now forwarding are original records and must be returned. They are, as you will see, very voluminous and it seems to me that we should not be asked to furnish photostatic copies of them. I should think Mr. Brown's purpose in asking for them might be fully served, if he and his associates were allowed to have such access to them as they may wish at your office.

Referring to items 5, 6, 7 and 8 of Mr. Brown's letter of July 6, I would say that we are advised that no separate estimates were made of the cost

of armed guard equipment, war zone requirements, hotel equipment, navigation outfit or other contingencies, but that the cost of these was lumped in the ten per cent. (10%) allowance mentioned in previous information furnished to Mr. Brown.

With reference to Mr. Brown's request in item 9 of his letter for "explanation of the discrepancy between Brown's estimate as to the cost of all material required for the construction of the tanker of 9100 d. w. t. and the actual cost of such materials with respect to hulls 1376 to 1381, inclusive," we do not think that we should be asked to furnish information of this character or that it is information which will be of any assistance to Mr. Brown in the preparation of his case, particularly in view of the fact that if any explanation of any such discrepancy becomes material, it will be so as a matter to be shown as a part of our case rather than as any part of the Government's case.

I am enclosing an additional copy of this letter which you may furnish to Mr. Brown if you wish.

Very truly yours,

W. W. Robison.

Benjamin O. Frick, Esq.,
Messrs. Evans, Bayard & Frick,
Land Title Building,
Philadelphia, Pa.

EXHIBIT G-23

BETHLEHEM SHIPBUILDING CORPORATION, LTD.

New York, August 8, 1928.

Mr. W. W. Robison,
Cravath, DeGersdorff, Swaine & Wood,
15 Broad Street, New York.

Dear Mr. Robison:

With reference to letter of July 6, 1928 from Mr. Ralph B. Evans in connection with information the Government desires from Bethlehem.

We are now in position to make a report to you on this subject and forward herewith certain information, all as below:

Question (1) Schedule of all items included in "Job 12" with respect to certain Fore River & Sparrows Point Hulls.

Schedule of items included in Job 12 is forwarded herewith marked Exhibit "A".

Information furnished herewith in connection with our Fore River Plant will be identical so far as Hulls 158 and 159 are concerned at our Sparrows Point Plant.

Question (2) Copies of all invoices, contracts, orders, etc. relating to "Job 12" materials used in connection with the construction of Fore River Hulls 244, 245, 253, 254, 268 & 269 and Sparrows Point Hulls 158 & 9.

We have been fortunate enough to locate most of the invoices relating to "JOB 12 MATERIAL" so far as it relates to information from our Fore River Plant. These invoices are forwarded to you in (3) separate binders, marked exhibits (B) (C) & (D). These invoices are original records and they should be returned.

Similar information for Hulls 158 and 159 at our Sparrows Point Plant is not available.

No information is furnished on contracts, orders, etc. as it was understood this would be furnished only in the event invoices were not available. In any event we are informed these can not be located except the copy of contract for steel on Hulls 244 and 245.

Question (#3) Statement showing the actual respective costs of steel and other materials included in Job 12 in connection with the construction of the foregoing ships, including Hulls 1376 to 1381.

The information requested is shown on Exhibits "E" and "F". In these statements we have grouped all material, except plates and shapes, in one group as it is difficult and practically impossible to make a correct analysis of the balance of the material.

Question (4) Copies of all contracts, agreements, options, etc. in existence December 19, 1917, relating to materials included in Job 12 as well as all other materials.

Investigation shows that we had no open contracts, agreements or options in existence December 19, 1917 relating to materials included in "JOB

12" or for any other materials which could be applied against new vessel construction.

With reference to questions 5, 6, 7, 8 and 9. We have heard from Mr. Brown, in accordance with our letter to you of yesterday, in which Mr. Brown informs us that he consulted with you on July 18th with reference to information asked for in these questions.

Very truly yours,

Bethlehem Shipbuilding Corporation, Ltd.

H. G. Smith
Vice President.

Copy for H. Brown
E. W. Geiss

EXHIBIT G-24

Exhibit A

SCHEDULE OF STRUCTURAL ITEMS AS CHARGED ON HULLS 244-45 and 253-54, AND MERGED INTO JOB 12, HULLS 268-69 & 1376-81

Job 5—*Loft Work*

Laying down, making scrieve boards, level boards, templates and all work done in the Mold Loft.

Job 11—*Structural Castings and Forgings*

Stem—Up to the point where it is erected complete, ready for attachment of plating and framing.

Stern Post—All parts of the stern post, including

counter and other castings, and the erection of them ready for attachment of plating and framing.

Shaft Struts—All work on shaft struts, except fitting of collars or other shell connections, and except any work in connection with boring or fitting of shafting.

Stern Tubes and Castings—All work on stern tubes and castings complete, including erection ready for attachment of plating and framing, but excepting boring and fitting of shafts.

Job 13—*All Steel Structural Work*

All steel structural work proper on the vessel except foundations, casings, trunks, deck erections and joiner bulkheads. This includes all framing, longitudinal and transverse, bulkheads, decks, keel, shell, bilge and decking keels, fenders, deck girders, inner bottom, and tank tops, miscellaneous flats and floors, deck beams, deck angles, and coamings for hatches, handling of above material, pickling, and testing of water-tight compartments, rivets, S paint, and putty.

Job 17—*Foundations*

Engine and boiler foundations, miscellaneous foundations and supports for pumps, condensers, heaters, tanks, winches, boat crane, ice machine, blowers, signal and conning towers, windlass, and wood filling for above where required.

Job 35—*Casings, Trunks, and Deck Erections*

Boiler and engine hatch casings, miscellaneous trunks and ducts (including deck angles or coaming plates) ammunition hoist, built in vent, and elevator trunks, deck houses, shaft, and coal bunker tunnels,

metal work in magazine and store rooms, door screens in coal bunkers.

SCHEDULE OF STRUCTURAL ITEMS AS CHARGED ON HULLS 244-45 and 253-54, AND MERGED INTO JOB 12, HULLS 268-69 & 1376-81

Job 41—*Rudder*

Castings, forgings, filling, boring, and bushing, for installation, rudder carrier and stuffing boxes, but not including crosshead or any part of steering gear.

Job 45—*Deck Pillars and Stanchions of Pipe or Forgings*

Deck stanchions and other structural stanchions when made of pipe or forgings (if built of plates and shapes they belong under job 13.)

EXHIBIT G-25

ACCOUNTING DEPARTMENT
BETHLEHEM SHIPBUILDING CORPORATION, LTD.
FORE RIVER PLANT

COMPARATIVE COST OF JOB 12 MATERIALS
HULLS 244-5, 253-4, 268-9, 1376, -81

	244-5			253-4			268-9		
	Weight		Amount	Weight		Amount	Weight		Amount
Plates and Shapes	14,952,381#	.0131	$195,186.85	15,272,014#	.0151	$ 230,736.91	14,567,585#	.0228	$332,718.94
All other material			41,883.87			75,014.33			65,093.06
Total material			$237,070.72			$ 305,751.24			$397,812.00

	1376-81		
	Weight		Amount
Plates and Shapes	45,407,023#	3.508	$1,592,764.42
All other material			356,774.95
Total material			$1,949,539.37

Quincy, Mass.—8-2-28

Exhibit G-25

1765

1766

Exhibit G-26

EXHIBIT G-26

Accounting Department
BETHLEHEM SHIPBUILDING CORPORATION, LTD.
BALTIMORE PLANT

Subject: Bethlehem V. Fleet Corporation
Reference: (a) Letter from Mr. F. A. Shick, Comptroller, BFB-2728-C dated July 11th.
(b) Letter from Mr. F. A. Shick, Comptroller, BFB-2781-C dated July 11th, to Mr. H. C. Brecht, Fore River Plant.

Hull No.	Date of Contract	Date Delivered	Job No. 12 Hull Steel Average Price per Pound	Total Cost	Job No. 12 Total Material Cost
4158)		3-29-17			
4159)	10-25-15	7-19-17	.0184	425,683.02	534,402.86

7-16-28

EXHIBIT G-27

June 30, 1928.

Mr. W. W. Robison,
Cravath and Henderson,
15 Broad Street,
New York City.

Dear Mr. Robison:—

With further reference to your letter of June 22nd wherein we forwarded to you certain information relative to our Fore River, Sparrows Point and Union Plants.

As stated in the last paragraph of that letter the information relative to our Harlan Plant was not yet completed. The information has now come to hand and I take pleasure in handing you herewith the data, marked exhibit 1-B.

Very truly yours,
Bethlehem Shipbuilding Corporation, Ltd.
H. G. Smith
Vice President.

EXHIBIT G-28

SUBSIDIARY COMPANIES OF BETHLEHEM STEEL CORPORATION.

Wilmington, Del. June 14th, 1928.

From G. H. Bankhard, Works Accountant, Harlan Plant,
To F. A. Stick, Comptroller
Subject Bethlehem v. Fleet Corporation
Dated May 21, 1928.

After making a thorough search, coupled with talking with the General Manager's Secretary, who

was here at that time, the writer was unable to obtain any information [illegible]ng to the procedure of accounting methods with relation to Cost keeping at this Plant.

The writer, personally, has never seen any records showing where actual weights were kept on steel applying on Hulls, other than the completed Cost Books, which were made up at that time, and am unable to find out from anyone at the Plant just how or where they were accumulated, as you know, this includes both material purchased and taken from stock.

After completing the search, we have found 99% of the Labor Distribution Books dating back to August, 1915, which were used in connection with making Payroll Summaries through this period. In some cases, as noted on the attached statement, it was necessary to make a few estimates.

The method followed with reference to your letter is herewith stated.

(a) Average price per pound for Hull steel—Owing to the inability to find the Accounts Payable Distribution during this period, it was necessary for us to go back to the Accounts Payable Vouchers, which, the writer is unable to say whether same were 100% on hand, but have taken approximately 300 invoices on each hull to arrive at an average price of hull steel. Price is delivered at the Plant.

(b) Estimated weight of hull steel—We have located the steel schedules for the hulls mentioned and it was necessary for us to calculate the schedule to arrive at the total weight of hull steel which was ordered for these particular hulls.

(c) Average rate per hour for labor—In order to arrive at the average Labor Rate at the Plant at that time, on account of the Payroll Summary not showing hours, it was necessary for us to use the Labor Distribution in making up new Payroll Summaries for the period of the construction of these ships. As stated before, it was necessary to estimate the rates in a number of cases.

(d) Direct Labor was taken from the Cost Ledger Sheets on Hulls 441, and 448, but, due to the absence of the same information on Hull 440, it was necessary to go back to the individual Journal Vouchers to build up the cost. You will find, at the bottom of the statement, that there is an amount of $1,804.80, which we were unable to locate on the Vouchers; therefore, it was necessary to make an adjustment.

G. H. Bankhard,
Works Accountant.

EXHIBIT G-29

HARLAN PLANT
DIRECT LABOR AND AVERAGE PLANT HOURLY RATE

	Hull 440 Direct Labor	Hull 441 Direct Labor	Hull 448 Direct Labor	Plant Average Hourly Rate
1915				
May	424.32			.2500*
June	1,696.31			.2500*
July	3,686.89			.2500*
August	5,141.00	111.86		.2526
September	6,283.09	177.48		.2705

	Hull 440 Direct Labor	Hull 441 Direct Labor	Hull 448 Direct Labor	Plant Average Hourly Rate
October	11,125.40	671.61		.2800*
November	11,861.37	1,440.62		.2838
December	15,159.71	2,339.75	29.64	.2809*
1916				
January	18,643.48	2,312.28	61.07	.2800*
February	21,059.18	2,450.37	101.37	.2711
March	32,694.34	3,811.72	684.79	.2800
April	24,710.20	4,975.58	1,105.23	.2768
May	16,767.93	5,462.87	1,351.97	.2740
June	27,629.78	6,253.74	2,527.57	.3095
July	1,287.96	4,356.22	2,125.30	.2938
August	366.52	7,943.61	2,988.41	.3045
September		12,927.24	7,019.25	.3141
October		15,270.59	6,437.30	.3185
November		16,286.80	5,942.13	.3244
December		18,503.93	4,760.41	.3315
1917				
January		23,773.85	5,487.31	.3085
February		18,630.82	7,061.40	.3345
March		25,645.63	14,070.61	.3486
April		22,477.32	16,122.96	.3494
May		16,413.83	31,758.28	.3599
June		13,164.73	28,100.68	.3638
July		24,780.31	24,613.39	.3714
August		17,618.89	83.40	.3817
September		5,888.46	11.88	.3851
October		5,910.78		.4030
November		14,512.96		.4218
December		7,284.12		.4278
1918				
January		387.55		.4436
February		29.59		.5216
March		12,025.52		.5298
April		237.22		.5673
May		7,325.52		.5673
Adjustment	1,804.80			
TOTAL	200,342.28	321,203.35	162,444.35	

Note— * Estimated.

EXHIBIT G-30

Harlan Plant

TOTAL WEIGHT AND COST PER POUND ON HULL STEEL ACCORDING TO PLATE AND SHAPE SCHEDULE

5/31/28

Hull No.	Pounds	Average Cost Per Pound
440	5,333,063	.01245
441	6,515,983	.01287
448	3,193,597	.01670

EXHIBIT G-31

June 19, 1928.

Cravath, DeGersdorff, Swaine & Wood,
Equitable Trust Building,
15 Broad Street, New York.
Attention: W. W. Robison

Dear Mr. Robison:

Subject: Bethlehem v. Fleet Corporation

Referring to the letter of May 24, written by Mr. Joseph J. Brown to Mr. Ralph B. Evans inquiring for the same information with respect to Hull #440 built at the Harlan Plant as has been furnished by Bethlehem with respect to other ships included in the statement prepared by it showing "general characteristics, etc." and such additional informa-

tion with respect to the same hull as is requested in their letters of May 1, 4 and 22, and inquiring also for a separate cost on hulls 132 and 133 constructed at the Union Plant, we desire to report as follows:

Information was furnished you in Mr. Smith's letter of yesterday from which Mr. Brown may obtain the price and total cost of hull steel; the hours and rate of labor for hull #440. Presumably Mr. Smith and Mr. Harry Brown are arranging to furnish you or have already done so with the other information requested for this hull in letters dated May 1, 4 and 22. Information with respect to this hull similar to that shown for other ships included in the statement showing "general characteristics, etc." is shown below:

Hull #	440
Name	Geo E. Paddleford
Keel Laid	July 1, 1915
Delivered	" 13, 1916
Type	Tanker
Character of Vessel	2 dk.—3 island
D.W.T.	7500
Classification	Lloyds
Estimated Cost	
Material	—
Labor	—
Actual Cost	
Material	$249,479.96
Labor	200,342.28
Expense (Operating)	89,876.83
A. & G. Expense	32,381.40
Depreciation	21,587.60
Total	$593,659.07

Selling Value

Contract Price	$605,000.00
Changes & Extras	4,934.20
Total	$609,934.20

Separate cost for Hulls #132 and #133 is (for two hulls):

Material	$1,057,673.56
Labor	683,640.76
Expense (Operating)	156,027.76
A & G Expense	113,840.52
Depreciation	75,893.68
	$2,087,076.28

Yours truly,

Bethlehem Shipbuilding Corporation, Ltd.,
E. W. Geiss
for Comptroller

EXHIBIT G-32

January 17, 1927.

Henry P. Brown, Esq.,
Land Title Bldg.,
Philadelphia, Pa.

Dear Mr. Brown:

I am transmitting herewith two copies of a statement outlining the information which we should like to have the Bethlehem Shipbuilding Corporation furnish in connection with the pending litigation.

The information requested is the same as was considered in the conference in your office last Friday, January 14th, 1927.

In making a request for this information I think it would be well to have it clearly understood that we shall want other information on other features of the case so that the Bethlehem officials may not think that this first request is complete and final.

You may inform the Bethlehem Shipbuilding Corporation that the information concerning the costs of vessels built by other shipbuilders is being assembled as rapidly as the work can be done with the limited force available.

Very truly yours,

Chauncey G. Parker,
General Counsel.

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1. COST OF REQUISITIONED SHIPS, AND SHIPS DELIVERED IN 1917 PRIOR TO THE REQUISITION.

The Bethlehem Shipbuilding Corporation is requested to furnish figures showing both the estimated costs on which contract prices were based, and the actual costs of construction for all ships indicated in (a) and (b) as follows:

(a) All ships delivered by the Fore River Shipbuilding Corporation, Samuel L. Moore & Sons Corporation, Harlan & Hollingsworth Corporation, Bethlehem Steel Company and Union Iron Works Company between January 1 and August 3, 1917.

(b) Hulls 268, 269, 272 and 273 at Fore River Yard; 115 and 116 at Moore Plant; 453, 454, 455 and 456, 457 and 458 at the Harlan Plant; 163, 167, 169, 170, 172, 173, 174 and 175 at the Sparrows Point Plant, and 140, 142, 143, 144, 145, 146, 147, 148, 149, 154, 162, 163, 164, 165, 166, 167, 168 and 169 at the Union Plant.

Cost figures on the foregoing ships should be detailed as follows:

Estimated Cost Used as Basis for Contract Price

(a) Estimated Cost of Material $

(b) Estimated Cost of Labor:

(1) Direct Labor $

(2) Indirect " $

Total Labor Cost $

(c) Estimated Cost of Overhead

(1) Expense (excluding A&G and Depreciation $

(2) A & G Expense $

(3) Depreciation $

Total Overhead $

(d) Estimated Profit $

Total Contract Price $

Actual Cost of Constructing Ship

(a) Cost of Material $

(b) Cost of Labor:

(1) Direct Labor $

(2) Indirect Labor $

Total Labor Cost $

(c) Cost of Overhead:

(1) Expense (excluding A&G. Depreciation	$
(2) A&G Expense	$
(3) Depreciation	$
Total Overhead	$
Total Cost of Construction	$

The number of hours of labor and average rate per hour should be shown for each ship.

In addition to the cost figures, the following additional information should be supplied for all the ships delivered between January 1 and August 3, 1917.

(a) Name and Hull No.
(b) Place of Construction
(c) Keel laying and completion dates
(d) Type of Ship (Tanker or Cargo)
(e) Character of Ship (Number of decks, etc.)
(f) Deadweight Tonnage
(g) Type of Engines & Boilers
(h) Classification
(i) Cost to Purchaser:

(1) Contract Price	$
(2) Changes and Extras	
(3) Wage Increases	
(4) Overtime Bonus paid to workmen	
(5) Overtime Coefficient	
(6) Excess Tonnage	
(7) Other Extra Costs	
Total Cost to Purchaser	$

2. COST OF TURBINES BUILT UNDER CONTRACT 4989 AND CONTRACT NO. 465

The cost of all turbines built under Contract No. 4989 and the cost of all turbines built under Contract No. 465 should be shown in the following detail:

(a) Work done directly by Bethlehem:
- (1) Material cost exclusive of reduction gears $
- (2) Labor Cost $
- (3) Overhead Cost $

Total Cost for Bethlehem Work

(b) Cost of reduction gears and other parts purchased outside $

Grand Total Cost $

Cost of spares should be shown separately.

3. ESTIMATES OF COST FOR CONTRACT SHIPS

Request is made for all figures, reports, working papers and other data used by Bethlehem Shipbuilding Corporation, Ltd. as a basis for the estimates of actual cost submitted with the proposals which resulted in Contracts numbered 177, 178, 179, 182, 183, 184, 191; 196, 226, 230, 299, 300, 301, 312, 313, 314, 340, 465 and 4989. The following information concerning the Bethlehem estimates is requested specifically:

HULL

(a) Hull Steel

(1) Estimated tons of steel

(2) Price of steel in (a) at rates prevailing when estimates were submitted

(3) Any additions for possible increase in steel prices

(4) Total estimated cost of steel for hull

(b) Hull Materials

(1) Estimated quantities of all other hull materials

(2) Price of hull materials in (e) at rates prevailing when estimates were submitted.

(3) Any additions for possible increase in material prices

(4) Total estimated cost of hull materials other than steel

(c) Hull Labor

(1) Estimated number of hours of labor on hulls

(2) Average labor rate per hour when estimates were submitted

(3) Average labor rate per hour used in estimates

(4) Total estimated cost of labor on hull

MACHINERY

(a) Estimated cost of material, (purchased complete, in parts or as raw material)

(b) Labor on Machinery

(1) Estimated number of hours of labor on machinery

(2) Average hourly labor rate when estimates were submitted

(3) Average hourly labor rate used in estimate

(4) Total estimated cost of machinery

EXPENSE

(1) Estimated Expense figured at rates prevailing when estimates were submitted.

(2) Any additions for possible increase in rates.

(3) Total estimated expense.

If possible, the estimates on all the contracts should be shown in the detail required by the usual practice of the Estimating Division of the Bethlehem Shipbuilding Corporation, as illustrated by the estimates dated June 17, 1918 for troop ships to be built at Union Plant.

PLANT INVESTMENT

Request is made for a statement showing the following:

(a) Total cost, less depreciation, of all plant facilities, shown by yards, as of December 31, 1916.

(b) Total cost of all additions to plant facilities paid for with the Bethlehem Shipbuilding Corporation's own funds, shown separately for 1917, 1918 and 1919.

(c) Total cost, less depreciation, of all plant facilities paid for with Bethlehem Shipbuilding Corporation's own funds as of December 31, 1917, December 31, 1918 and December 31, 1919.

(d) Cost of all additions to plant facilities paid for with funds advanced by the Fleet Corporation, shown separately by years.

(e) Costs of all additions to plant facilities paid for with funds advanced by the Navy Department, shown separately by years, for years 1917, 1918 and 1919, or later years if any.

USE OF PLANT FACILITIES

Request is made for a statement showing what proportion of plant facilities was used in each year from 1917 to 1922 inclusive for Fleet Corporation work, Navy work and Bethlehem's private or commercial work.

NAVY CONTRACTS

Request is made for a statement showing contracts with the Navy Department made in 1917 and 1918, time occupied in completing contracts, and other information as follows:

(a) Original estimated Basis Cost $
(1) Changes and Extras
(2) Wage Increases
(3) Increase in Material Prices
(4) Increase in freight
(5) Other increases to estimated cost

(6) Total Revised Basis Cost $

(b) Actual Cost Adjusted for Savings $

Gross Savings $

(c) Payments received from Navy:
(1) For cost of construction $
(2) For Fixed Fees
(3) For Share in Savings

Total Payment Received $

ANNUAL REPORTS

Bethlehem is requested to supply the following:

(a) Copies of the annual reports for the years 1916, 1917, 1918 and 1919 for Bethlehem Steel Corporation, Bethlehem Steel Company, Penn-Mary Company, Maryland Steel Company, Fore River Shipbuilding Corporation, Samuel L. Moore & Sons Corporation, Moore Shipbuilding Company, Harlan & Hollingsworth Corporation, Union Iron Works Company and Union Iron Works Dry Dock Company; also copy of each annual report of Bethlehem Shipbuilding Corporation from its organization to the present time.

(b) List of principal officers and lists of directors for each of the above named companies in the years 1916, 1917, 1918 and 1919.

Information requested in (b) need not be furnished if same information is included in annual reports.

STOCK AND BOND HOLDINGS BY CHARLES M. SCHWAB

Request is made for a statement showing:

(a) Total number of shares of common stock and total number of shares of preferred stock outstanding in 1917 and 1918 for each of the corporations named under the last heading above.

(b) Total number of such shares of stock held by Charles M. Schwab or for his beneficial ownership.

(c) Total bonded indebtedness outstanding

in 1917 and 1918 for each of the above named corporations.

(d) Total of such bonded indebtedness represented by bonds held by Charles M. Schwab or for his beneficial ownership.

EMPLOYMENT OF $24,000,000.00 ADVANCED BY FLEET CORPORATION AND NAVY

Request is made for a statement showing where advances of $8,000,000.00 by Fleet Corporation and $16,000,000.00 by Navy Department were deposited and other information as follows:

(a) Cash balance in account or accounts representing Bethlehem's own funds at date of receipt of first advance from the Navy Dept.

(b) Subsequent deposits by months:
  (1) Of Navy funds $
  (2) Of Fleet Corporation's funds
  (3) Of Bethlehem's own funds

(c) Withdrawals by months for cost of Navy Work $

(d) Withdrawals by months for cost of Fleet Corp. work

(e) Withdrawals by months for general business of Bethlehem exclusive of Navy and Fleet work

(f) Total bank interest received

(g) Total bank interest applicable to Navy funds

(h) Total bank interest applicable to Fleet funds

The foregoing statement should cover the period from the date of the first Navy advance to the date of repayment of the last instalment of the Fleet advance.

EXHIBIT G-33

Law Offices of
EVANS, BAYARD & FRICK

March 22, 1927.

Bethlehem Shipbuilding Corp. v. U. S. Shipping Board

Dear Mr. Brown:

Referring to Mr. Parker's letter of January 17th requesting certain information, I find that certain of the information requested is not available and certain of the information we consider irrelevant under any theory of the case.

The information which is unavailable and cannot be furnished is:

1. Estimated cost of requisition ships and ships delivered between January 1 and August 3, 1917. In the case of some of these ships there are no records of estimated cost whatever. In those cases where the estimates are available, they do not include estimated cost of overhead. We will furnish all available information under this heading.

2. Estimates of cost for contract ships. We have and will furnish the working papers used in making these estimates, but these will not show estimates of cost in detail as requested.

3. Annual reports. Neither the Bethlehem Shipbuilding Corporation nor any of its subsidiaries published an annual report for the years in question. We will, however, furnish annual reports of the Bethlehem Steel Corporation.

4. Employment of moneys advanced by Fleet Corporation and Navy.—It would be practically im-

possible to furnish this information in the form requested. We have, however, computed the bank interest allowed on the advances from the Fleet Corporation and will furnish this information.

The following information we consider irrelevant and decline to furnish it at this time unless ordered by the Court. We will, however, have the information prepared available for use if the Court should deem it material.

1. Actual cost of constructing requisition ships completed after December 31, 1917. We will, however, furnish the cost of such of the requisition ships as were completed prior to December 31, 1917.

2. Cost of turbines built under contracts 4989 and 465.

3. Navy contracts.

4. Stock and bondholders of Charles M. Schwab. In view of the admission we propose to make in our reply that Mr. Schwab was one of the largest stockholders of the Steel Corporation, we believe this information is immaterial.

Except as stated above, we will furnish all the information requested, and I expect to have this in hand within the next week.

Will you please let me know definitely when the Shipping Board will be prepared to furnish the information which we have requested.

Yours very truly,

Ralph B. Evans.

Henry P. Brown, Esq.,
1535 Land Title Bldg.,
Philadelphia, Pa.

Nov. 1917-V

NET + WAGE + 10% CONTINGENT

Exhibit C-26 1765

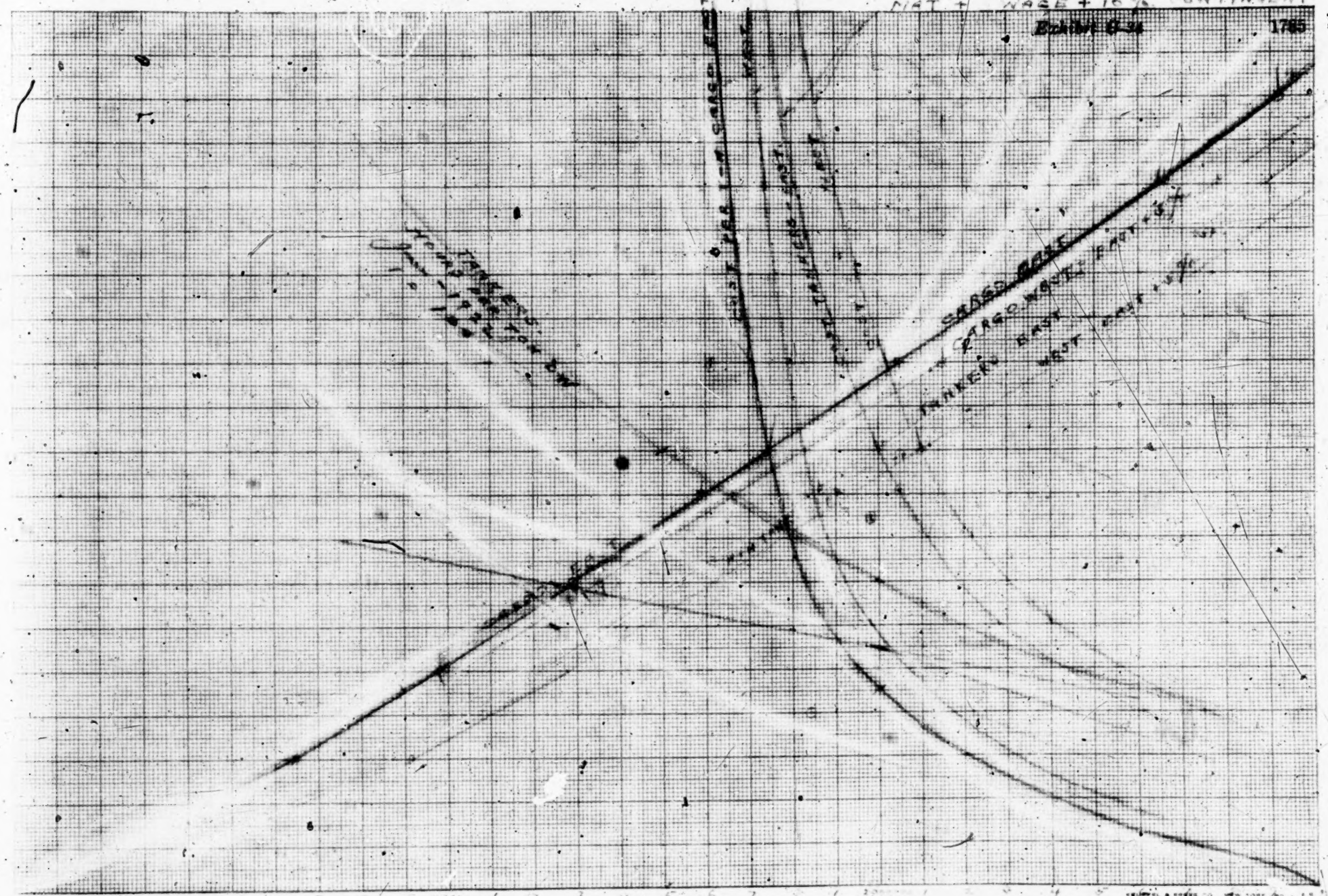

EXHIBIT G-39

June 22nd, 1928.

Mr. W. W. Robison,
Cravath and Henderson,
15 Broad Street,
New York City.

Dear Mr. Robison:

In answer to your letter of May 7th to Mr. E. W. Geiss asking for additional information in connection with certain ships which were completed in 1917. We have been in communication with our various plants and beg to report that at none of our plants has it ever been the practice to keep finished weights for individual ships. Under the circumstances the only information we can give you is the light weight of each of these vessels as taken from the "curve of form" or "deadweight and capacity scale" plans.

This information is furnished on the attached sheet marked Exhibit "A".

Very truly yours,

Bethlehem Shipbuilding Corporation, Ltd.
H. G. Smith,
Vice President.

HGS*CCK
Encl.

BETHLEHEM SHIPBUILDING CORPORATION, LIMITED

Information requested under items 1, 2 and 3 of Mr. Brown's letter to Mr. Ralph Evans of M[illegible]

1928. Accompanies our letter of June 22nd to Crayath and Henderson.

	Light Weight, Gross Tons
Fore River Plant	
Hull 251	4863
Hulls 253-4	4330
Hull 255	2385
Harlan Plant	
Hull 440	3400
Hull 441	3794
Hull 448	1839
Sparrows Point Plant	
Hulls 158-9	6210
Hull 163	2764
Hull 164	2040
Hull 167	3048
Union Plant	
Hull 16	2536
Hull 17	2636
Hull 130	4233
Hulls 132-3	4080
Hulls 136-139	4213
Hull 140	4142
Hull 141	4233
Hull 142	4212

EXHIBIT G-40

BETHLEHEM SHIPBUILDING CORPORATION, LTD.

Bethlehem, Pa., August 25th, 1919.

Mr. J. L. Ackerson, Vice-President,
Emergency Fleet Corporation,
140 North Broad Street,
Philadelphia, Pa.

Dear Sir:

Subject: *Relation of Administrative Expense to Total Cost.*
Reference: Your letter of August 8th, 1919.
Enclosure: List of Accounts included in Administrative and General Expense.

We figure that the Administrative and General Expense of the Bethlehem Shipbuilding Corporation, Ltd., as shown on the two (2) attached sheets, exclusive of disallowed costs by the Emergency Fleet Corporation, is approximately one per cent (1%) of the manufacturing cost of the work in all of the ship yard plants. This average was determined by using the period January 1918 to June 1919, inclusive.

Very truly yours,

Bethlehem Shipbuilding Corporation, Ltd.

F. A. Shick,
Comptroller.
W. A. Hauck.

Bethlehem Steel Company
and
Bethlehem Shipbuilding Corporation, Ltd.

ADMINISTRATIVE AND GENERAL EXPENSE

These accounts should include the total expense of the respective divisions.

The total of these accounts should be divided between the two Companies on the basis of Total Plant Pay Rolls and charged to accounts B-21 and C-21.

A-21. Proportion of General Expense. (Bethlehem Steel Corporation)
A-22. President.
A-24. Vice-President (H. E. L.).
A-25. Vice-President (H. S. S.).
A-35. Washington Office.
A-36. Secretary.
A-37. Treasury.
A-38. Administrative Accounting.
A-39. Purchasing.
A-40. Traffic.
A-43. General Office Building.
A-44. General.

Sub-Accounts.

A. Salaries and Wages.
B. Office Expense:
Including Printing, Stationery, Postage, Office Supplies, Furniture, Office Appliances, Premiums on Fidelity and Guaranty Bonds, Fuel, Water, and expenses not otherwise covered.
C. Telephone and Telegraph.

D. Traveling and Entertaining.
E. Advertising.
F. Rentals.
G. Miscellaneous.
H. Repairs, Renewals and Betterments.

6A

Bethlehem Shipbuilding Corporation, Ltd.

ADMINISTRATIVE AND GENERAL EXPENSE

These accounts should include the total expense of the respective divisions.

The total of these accounts should be distributed each month to the various plants on the basis of Plant Pay Roll.

C-21. Proportion of General Expense.
(See Page 6A.)
C-27. Vice-President (J. W. P.).
C-28. Manager.
C-29. Technical Manager.
C-30. Material Department.
C-31. Service Department.
C-41. Order Department.
C-43. Office Building (Brodhead and Packer Aves.).
C-44. General.

Sub-Accounts

A. Salaries and Wages.
B. Office Expense:
Including Printing, Stationery, Postage, Office Supplies, Furniture, Office Appliances, Premiums on Fidelity and Guar-

anty Bonds, Fuel, Water, and expenses not otherwise covered.
C. Telephone and Telegraph.
D. Traveling and Entertaining.
E. Advertising.
F. Rentals.
G. Miscellaneous.
H. Repairs, Renewals and Betterments.

6C
(Revised 1-1-19)

EXHIBIT G-41

UNION IRON WORKS COMPANY

San Francisco, Sept. 29, 1917.

Captain A. F. Pillsbury,
District Officer,
U. S. Shipping Board,
310 Sansome St.,
San Francisco.

Dear Sir:

Stock Freighters—Hulls Nos. 150, 151, 153 & 170

In compliance with your request for information concerning the status of these vessels, we beg to report as follows:

Hulls 150, 151 and 153 are all substantially alike and are of the following dimensions:

Length	410 ft.
Breadth	56 ft.
Molded depth	41 ft. to shelter deck

Each of them will be equipped with three Scotch boilers. Hulls Nos. 150 and 153 will have Curtis geared turbine propelling machinery developing 2600 Shaft Horsepower and Hull 151 will have a triple expansion engine, 27 x 47 x 78 - 48" stroke, developing 2600 I. H. P.

About 600 tons of structural steel for each of these vessels has been received in our yards and has practically all been fabricated in our shops ready for assembling. The balance of the structural material for these vessels is either in transit or is now being rolled at the mills and we expect complete shipment from mills will be effected within the next three or four weeks.

The triple expansion engine for Hull 151 is completely finished in our shops and is now ready for installation in the Hull when ready to receive it. The two turbine reduction sets for Hulls 150 and 153 are in process of manufacture at the works of the General Electric Co., Schenectady, and will be here in ample time for installation when their respective hulls are ready to receive them.

The boiler material for all three vessels is on hand and their construction is under way.

Auxiliary and deck machinery, pumps, anchors and chains, deck fittings and all other material required in connection with the construction and equipment of these vessels is in various stages of completion or manufacture and will be available for installation as soon as the hulls are sufficiently advanced.

It is our intention to build these vessels at our Alameda Plant.

The following vessels are now in various stages of active construction on building slips: 135, 144, 145, 146, 148, 149 and 154. The next keels to be laid will be those of Hulls 147, 150, 151 and 153 and their construction should proceed rapidly.

Hull 170: This is a single deck, shelter deck (i. e. two decks including shelter deck) freighter of the following dimensions:

Length	440 feet
Breadth	56 "
Depth	38 "

similar to Hulls Nos. 162 to 169 inclusive which we have under contract to build for the Cunard Steamship Co., except that whereas the Cunard vessels will be equipped with Curtis geared turbine propelling machine developing 3000 shaft horsepower, Hull 170 will be equipped with a Westinghouse Parsons geared turbine of the same power. This vessel will be equipped with three Scotch boilers.

The hull material for this vessel has been ordered and about 500 tons of shapes already received, but naturally little work has so far been done in the construction of this vessel as we have directed that the Hull plates for this vessel be rolled in rotation following the completion of rollings pertaining to the vessels bearing lower hull numbers. In the meantime however we are proceeding with the manufacture of certain auxiliary deck machinery, fittings etc.

Yours very truly,

John A. McGregor,
President.

EXHIBIT G-42

August 30th, 1917.

Subject: Requisitioned Vessels.

Sir:

Referring to the various correspondence on the above subject and to our verbal understanding that it is the desire of the Shipping Board to have all vessels which have been requisitioned and now being constructed at our works completed with the utmost vigor and dispatch, we beg to advise that we are giving this subject careful consideration and pending final adjustment, we should be obliged if the board would officially advise this company that it authorizes and approves the action taken by it in working overtime on these vessels and the continuance of same until completion and that such overtime, loss in efficiency and other expense incident thereto, be paid this company as an extra to the contract.

Our regular established hours of work under normal conditions are eight hours per day or forty-eight hours per week. Extra pay is made for time worked in excess of these hours.

We have received an approval from the Shipping Board covering payment (as an extra to the contract price) for overtime on vessels requisitioned from the Pan American Petroleum & Transport Company, our Hulls Nos. 268-269, but no official notification has yet been given covering payment for overtime on vessels requisitioned from the Cunard Steamship Company, our Hulls Nos. 272-273, or on

vessels requisitioned from E. F. Luckenbach, our Hulls Nos. 264-265 and 267.

Owing to the great demand for skilled labor in the shipbuilding trade which is created by the requirements for large volumes of ship tonnage, we have been compelled to hire unskilled men and train them in the performance of certain work.

We now have under investigation the amount of increased cost which will be directly caused by overtime work, the amount which will be involved due to working longer hours, due to working night shift and to the employment of unskilled labor. All these items cause an increase in cost and in connection therewith, we are preparing an estimate covering such increase in cost which when completed will be placed before the Board for its consideration and in order that as near an estimate of final cost can be made as existing conditions will permit.

Very respectfully,

Fore River Shipbuilding Corporation,

By J. W. Powell,
President.

Rear Admiral W. L. Capps, General Manager,
United States Shipping Board,
Emergency Fleet Corporation,
Washington, D. C.

Copy to Mr. W. H. Hand, *District Officer*,
Mr. J. F. Arringdale, *Resident Inspector*.

BETHLEHEM SHIPBUILDING CORPORATION, LTD.

UNION PLANT.

Statement Showing Amount Collectible by Contractor from U.S.S.R. Emergency Fleet Corporation, as of February 29th, 1932.

Contract No.	Beth. Hull Nos.	Audited and Approved Material	Labor	Manufacturing Expense	Cost Total	AUDITED A. & G. Expense	AUDITED Depreciation	Total Cost as Audited & Approved	Fixed Fee	Audited Bethlehem Savings	Audited Bethlehem Selling Price	PAYMENTS BY U. S. F. C. Costs	Fixed Fee	Savings	Total Payments by U. S. F. C.	Balance due to Bethlehem
191 SC	180	$688,214.01	705,287.75	169,658.94	1,563,160.70	9,508.92	6,124.34	1,578,793.96	212,400.00	No detail	No detail	1,470,160.26	190,350.00	287,500.00	1,948,010.26	
	181	688,214.01	705,287.74	169,658.91	1,563,160.66	9,508.92	6,124.35	1,578,793.93	210,600.00	do	do	1,721,802.04	190,350.00	287,500.00	2,199,652.04	
	183	696,147.05	720,418.58	155,864.11	1,574,429.74	9,508.92	6,125.35	1,590,063.01	212,400.00	do	do	1,571,758.43	191,160.00	285,000.00	2,047,918.43	
	170	758,456.68	683,564.71	164,781.76	1,606,802.15	9,508.92	6,124.35	1,622,435.42	216,000.00	do	do	1,642,020.36	194,400.00	240,000.00	2,076,420.36	
Total Cont. 191SC		2,830,030.75	2,814,558.78	669,963.72	6,307,553.25	38,035.67	24,497.39	6,370,086.31	851,400.00	1,447,276.05	8,668,761.34	6,405,741.11	766,260.00	1,100,000.00	8,272,001.11	$396,760.23
239 SC	215	824,126.71	578,915.09	191,916.16	1,594,956.78	10,614.95	7,869.31	1,613,441.04	207,500.00	328,898.24	2,149,839.28	1,624,767.73	186,750.00	227,500.00	2,039,017.73	111,225.55
	216	824,126.74	578,917.89	191,916.18	1,594,956.78	10,614.96	7,869.31	1,613,441.05	207,500.00	328,898.24	2,149,839.29	1,624,767.75	186,750.00	227,500.00	2,039,017.75	111,225.54
Total Cont. 239SC		1,648,253.45	1,157,827.78	383,832.33	3,189,913.56	21,229.91	15,738.62	3,226,882.09	415,000.00	657,796.48	4,299,678.57	3,249,535.48	373,500.00	455,000.00	4,077,227.48	222,451.09
177 SC	5257	923,668.27	1,001,612.62	387,082.92	2,312,363.81	17,629.81	11,876.76	2,341,870.38	210,600.00	No detail	No detail	2,366,402.38	189,000.00	-	2,555,402.38	
	5258	853,834.97	807,095.11	265,237.63	1,926,167.71	17,629.81	11,876.76	1,955,670.28	210,600.00	do	do	1,680,747.05	189,000.00	140,407.17	2,009,780.22	
	5259	875,696.99	665,074.01	221,816.94	1,762,549.94	17,629.81	11,876.76	1,792,056.51	210,600.00	do	do	1,816,648.47	189,000.00	190,347.13	2,195,995.60	
	5260	861,879.01	672,701.39	237,208.67	1,771,789.07	17,629.81	11,876.76	1,800,895.64	210,600.00	do	do	1,825,565.78	189,000.00	186,954.97	2,201,520.75	
	5261	860,738.65	700,654.86	250,207.95	1,811,602.46	17,629.81	11,876.76	1,841,109.03	210,600.00	do	do	1,865,796.68	189,000.00	176,827.65	2,231,624.33	
	5262	854,106.23	713,969.82	254,625.35	1,822,701.40	17,629.81	11,876.76	1,852,208.17	210,600.00	do	do	1,877,877.96	189,000.00	175,676.51	2,242,554.47	
	5265	852,896.20	680,722.88	241,709.81	1,774,328.89	17,629.80	11,876.76	1,804,435.45	210,600.00	do	do	1,830,081.99	189,000.00	186,813.85	2,205,895.84	
	5264	847,273.62	705,480.53	300,135.90	1,852,898.05	17,629.80	11,876.76	1,882,404.61	210,600.00	do	do	1,908,052.09	189,000.00	167,613.80	2,264,665.89	
	5265	855,779.91	662,280.32	243,565.26	1,761,633.49	17,629.80	11,876.76	1,791,140.05	210,600.00	do	do	1,816,802.92	189,000.00	189,043.52	2,194,846.44	
	5266	868,117.94	642,551.24	259,826.15	1,740,698.33	17,629.80	11,876.76	1,790,103.89	210,600.00	do	do	1,815,764.76	189,000.00	187,318.84	2,192,083.60	
	5267	875,813.07	664,174.95	251,347.60	1,791,731.62	17,629.80	11,876.75	1,820,838.17	210,600.00	do	do	1,845,996.89	189,000.00	184,023.59	2,219,018.48	
	5268	855,781.54	682,122.22	250,866.71	1,786,790.47	17,629.80	11,876.75	1,816,297.02	210,600.00	do	do	1,841,710.02	189,000.00	195,216.42	2,225,926.44	
Total Cont. 177SC		10,373,609.40	8,598,117.95	3,163,241.09	22,134,968.44	211,557.66	142,521.10	22,489,047.20	2,820,000.00	2,780,771.03	27,789,818.23	22,791,035.96	2,268,000.00	1,980,242.47	27,039,278.39	780,539.84
201 SC	5269	898,709.03	641,101.68	246,650.42	1,786,461.13	18,156.72	13,234.86	1,817,852.71	210,600.00	No detail	No detail	1,670,237.45	189,000.00	181,723.38	2,200,961.22	
	5270	912,529.38	650,991.96	234,018.01	1,777,539.35	18,156.72	13,234.86	1,808,930.93	210,600.00	do	do	1,811,227.40	189,000.00	190,384.39	2,190,711.79	
	5271	883,857.32	662,804.20	252,870.46	1,799,231.98	18,156.72	13,234.86	1,830,623.56	210,600.00	do	do	1,873,027.86	189,000.00	190,202.94	2,212,230.80	
	5272	937,528.59	531,296.17	204,513.59	1,673,338.35	18,156.72	13,234.86	1,704,729.93	210,600.00	do	do	1,703,024.17	189,000.00	175,000.00	2,067,024.17	
	5273	904,782.77	471,632.22	184,945.30	1,561,387.29	18,156.72	13,234.86	1,592,748.87	210,600.00	do	do	1,599,334.35	189,000.00	175,000.00	1,963,734.35	
	5274	929,756.01	421,874.53	229,311.40	1,580,942.68	18,156.72	13,234.86	1,612,034.06	210,600.00	do	do	1,597,870.96	189,000.00	175,000.00	1,961,870.96	
	5275	820,269.78	583,998.20	298,033.32	1,702,271.30	18,156.73	13,234.85	1,733,662.88	207,500.00	do	do	1,735,917.67	186,750.00	196,382.31	2,119,099.98	
	5276	836,128.89	844,476.01	283,008.81	1,433,613.71	18,156.73	13,234.85	1,465,005.29	207,500.00	do	do	1,657,670.96	186,750.00	220,379.94	2,064,762.90	
	5277	818,945.58	506,847.25	236,141.16	1,560,933.99	18,156.73	13,234.85	1,592,325.57	207,500.00	do	do	1,599,856.75	186,750.00	240,694.14	2,017,298.89	
Total Cont. 201-SC		7,942,507.35	4,994,722.22	2,148,100.01	15,085,389.58	163,410.51	119,113.70	15,367,913.79	1,892,800.00	2,577,565.31	19,827,979.10	15,358,279.45	1,694,250.00	1,744,757.67	18,797,287.01	1,030,692.08
TOTAL ALL CONTS.		$22,794,400.95	17565,226.73	6,350,197.15	44,717,824.83	434,233.75	301,870.81	47,453,929.79	7,868,900.00	7,463,407.85	40,786,237.24	47,803,784.00	5,102,017.00	5,280,000.00	58,185,794.00	2,400,443.84

EXHIBIT G-96

UNIÓN IRON WORKS COMPANY

New York, October 26th, 1917.

Admiral W. L. Capps, General Manager
United States Shipping Board Emergency Fleet Corporation
Washington, D. C.

Dear Sir:

We offer to enter into a contract with your Corporation to build, equip and deliver at our Works at San Francisco and/or Alameda, California, three (3) Single Screw Shelter Deck Cargo Steamers (our Hulls #150, 151 and 153), of the following general dimensions, viz:

Length between perpendiculars	410′ 0″
Breadth moulded	56′ 0″
Depth moulded to upper deck	32′ 0″
Depth moulded to shelter deck	41′ 0″

Two of the vessels will have for propelling machinery Curtiss reduction geared turbines of about 2600 s. h. p., built by the General Electric Company, and one vessel will be equipped with a triple expansion engine of the same power built in our own shops. Each vessel will be equipped with three (3) single ended, 3-furnace, Scotch boilers, also built in our own shops, and fitted to burn oil fuel.

These vessels are on the longitudinal (Isherwood) framing system and are designed for a deadweight carrying capacity of 11,700 to 11,800 tons, including cargo, fuel, water and stores, on a maximum mean draft of 30′ 6″. Sea speed loaded 10½ knots.

Complete plans and detailed specifications of hull, machinery and equipment will be submitted.

Delivery: First vessel on or before June 30, 1918: second vessel on or before July 15, 1918 and the third vessel on or before July 31, 1918.

Penalty and Premium: We are agreeable that the proposed contract shall include a clause providing for a penalty of Three Hundred Dollars ($300.00) per day for delay (not beyond our control) in delivery after the above mentioned dates, and a premium of like amount for delivery earlier than these dates.

Insurance: During construction and until delivery to be provided by Builder.

Price: Two Hundred and Five Dollars ($205.00) per deadweight ton.

Terms of payment: On signing contract, for each vessel, $500,000.00; balance to be in fortnightly instalments equivalent to percentage of completion, as certified by Owner's representative. When 90% of contract price of each vessel shall have been so paid no further payments shall be due and payable until completion and acceptance by Owner.

A very considerable portion of the hull steel for these vessels has already been received in our yards and the balance is either en route or scheduled for early shipment from mills. All material for boilers is on hand. Engines, auxiliary machinery and equipment will be ready for installation by the time the hulls are ready to receive them. For this reason

we confidently expect to be able to make deliveries on schedule time or earlier if possible.

Respectfully submitted,

Union Iron Works Company,

John A. McGregor,
President.

F

Memorandum of Agreement made this twenty-ninth day of October, 1917, between the Bethlehem Steel Company, a corporation, organized and existing under the laws of the State of Pennsylvania, and having its principal place of business at South Bethlehem, Pennsylvania, party of the first part; Ore Steamship Corporation, a corporation organized under the laws of the State of Delaware, and having its principal place of business at South Bethlehem, party of the second part; Maryland Steel Company, a corporation organized under the laws of the State of Maryland, and having its principal place of business at Sparrows Point, Maryland; party of the third part; Spanish-American Iron Company, a corporation organized under the laws of the State of West Virginia, and having its principal place of business in the City of , party of the fourth part; the United States Shipping Board Emergency Fleet Corporation, a corporation organized under the laws of the District of Columbia, and having its principal place of business in the City of Washington, hereinafter called the Fleet Corporation, party of the fifth part; Witnesseth:

Whereas: Maryland Steel Company entered into a certain agreement in writing dated the fourth day of January, 1916, with Spanish-American Iron Com-

pany for the construction of a singlescrew steel freight steamship, to be known as Hull No. 161, which contract was thereafter assigned on or about the ninth day of September, 1916, to Ore Steamship Corporation, and

Whereas: Maryland Steel Company entered into a certain agreement in writing dated the twenty-fourth day of April, 1916, with Ore Steamship Corporation for the construction of a steel freight steamship, to be known as Hull No. 162, which contract has since been reassigned to Ore Steamship Corporation, and

Whereas: The Bethlehem Steel Company is constructing through its subsidiary company, three other steel ships, to be known as Hulls Nos. 165, 166 and 168, and

Whereas: Said five ships were duly requisitioned by the Fleet Corporation on August 3d, 1917, and are now the property of the United States, and

Whereas: Bethlehem Steel Company and Ore Steamship Corporation requested on October 12th, 1917, that the said five ships be transfefred to said Ore Steamship Corporation, and

Whereas: It has been represented to the Fleet Corporation, and Fleet Corporation believes that said five ships were constructed for the special purpose of transporting iron ore from Cuba and Chile to the plants of the Bethlehem Steel Company, and are not desired by the Fleet Corporation for the use of the United States, and

Whereas: The Fleet Corporation has issued no orders relating to the completion of said ships, which in any way increased their cost or delayed their de-

liveries, or in any way caused damage to any of the other parties of this agreement.

Now therefore, for and in consideration of the premises and of the performance of each and every of the agreements hereinafter contained and of the sum of one dollar each to the other in hand paid, the receipt of which is hereby acknowledged, it is agreed:

I.

The United States, acting through the Fleet Corporation, in accordance with the Statute of June 15th, 1917, and the Executive Order of July 11th, 1917, hereby transfers, sets over and assigns to Ore Steamship Corporation all of its right, title and interest in and to the said ships hereinabove described.

II.

The Bethlehem Steel Company, Ore Steamship Corporation, Maryland Steel Company and Spanish-American Iron Company hereby severally release the United States, the United States Shipping Board, and the United States Shipping Board Emergency Fleet Corporation from any and all liability of every nature whatsoever, arising out of the Requisition Order of August 3d, 1917, and/or any other order heretofore given prior to the date of these presents, relating to the said ships by the said Fleet Corporation, and the said parties hereby severally agree to indemnify and hold harmless the said United States Shipping Board and the United States Shipping Board Emergency Fleet Corporation from any and all claims in connection with the said five ships, either arising out of the contracts under which the said ships or any of them were constructed or in any other manner.

The Fleet Corporation hereby consents to the completion of the said ships and to the use thereof after completion in the trade of the Ore Steamship Corporation and/or Bethlehem Steel Company until requisitioned by the United States Shipping Board or other governmental agency.

III.

Nothing in this agreement shall be construed as a waiver on the part of the Fleet Corporation or the United States Shipping Board, or any other governmental agency, of their or its right at some future time to requisition the said ships or any of them, or the use thereof.

IV.

Nothing in this agreement contained shall prejudice the right of the United States Shipping Board to fix or limit the amount of just compensation to be paid for the said ships or any of them or the use thereof, in the event of requisition.

In witness whereof the parties hereto have caused these presents to be executed by their duly authorized officers respectively.

Bethlehem Steel Company,

By H. S. Snyder,
Vice President.

Attest:
W. F. Hartmann,
Asst. Secy.

Ore Steamship Corporation,
By Jno. M. Gross,
President.

Attest:
F. H. Fatzinger
Maryland Steel Company,
By F. W. Wood,
President.
Attest:
John H. Shannahan
Spanish-American Iron Company,
By C. A. Buck,
President.
Attest:
W. F. Hartmann,
Asst. Secy.
United States Shipping Board
Emergency Fleet Corporation,
By Edward N. Hurley,
W. L. C.
Attest:
Lester Sisler
Secretary

EXHIBIT G-97

Oct. 30, 1917.

Union Iron Works,
San Francisco, Calif.

Gentlemen:

The Corporation is in receipt of your offer of October 26th for the completion of three vessels—your hulls 150, 151, and 153—on certain specified conditions.

Your attention is called to the fact that in our letter of October 13, 1917, you were authorized to

proceed with the construction of these vessels, payments to be made on the basis of actual cost plus approved overhead until other arrangements could be made.

Your attention is called to the fact that the specifications of the hull and machinery have not been received.

We ask you to state why the proposed price of $205.00 per d. w. ton for these vessels is so much greater than contemporaneous vessels building at your works. We ask you to inform us what prices of hull steel and other principal equipment for these vessels have been placed, and to state how it compares with that of other contemporaneous vessels.

Very truly yours,

F. T. Bowles,
Manager Division of Construction.

EXHIBIT G-101

BETHLEHEM SHIPBUILDING CORPORATION LTD.

Union Plant
San Francisco

Nov. 30, 1917

Captain A. F. Pillsbury,
District Officer, U. S. Shipping Board,
310 Sansome St., San Francisco.

Dear Sir:

Cargo Vessels—Hulls 150-151 & 153

Referring to my visit at your office this morning at which time you showed me letter dated November

20, 1917 from Admiral Bowles directing you to endeavor to expedite arrangements for purchasing from us certain vessels under construction the building of which was undertaken by us as a so-called stock proposition.

As explained to you I am rather at a loss to understand Admiral Bowles communication above referred to. I understand you are not familiar with the pending negotiations for the sale of our Hulls Nos. 150, 151 and 153 to the U. S. Shipping Board Emergency Fleet Corporation and for your information I might explain that while at Washington recently I took up with Admiral Bowles the question of the purchase by the Government of these vessels and in compliance with his request submitted him plans and specifications together with a tentative contract, which contract was duly executed by me on behalf of the Union Iron Works Company and all of which data is in Admiral Bowles possession. I might mention that at the time I submitted the contract and plans the complete specifications did not accompany them but these were subsequently furnished and I have Admiral Bowles' acknowledgment of their receipt.

In terms of the contract above referred to we offered substantially to sell these three vessels to the Emergency Fleet Corporation for the sum of $2,419,000.00 each, such lump sum price being calculated on a deadweight of 11,800 tons at $205.00 per deadweight ton with a provision for an allowance at the rate of $205.00 for every ton that each or any of the vessels might fall short of 11;800. The guaranteed sea speed of the vessels is 10½ knots and we guaranteed to deliver the first vessel by July 1st, the second vessel by July 15th and the third vessel

by July 31, 1918 under a penalty of $300.00 per day for every day that such delivery was delayed and a corresponding premium of $300.00 for every day such delivery was anticipated.

The contract provided for the sale of the vessels in accordance with the plans and specifications submitted and any changes involving extra cost should be paid for as an extra and likewise extend the above mentioned dates of delivery if any proposed changes should increase the time of construction.

I have looked over the changes in construction which have been proposed and it is quite evident that if the major changes suggested are required it will very considerably delay the completion and delivery of the vessels beyond the dates mentioned above. I would suggest that you send a night letter to Admiral Bowles and refer him to the fact that he has all the data before him and that as a matter of fact I had been expecting to hear from him on the subject.

Yours very truly,
John A. McGregor,
Pacific Coast Representative

EXHIBIT G-104

(Letterhead of Bethlehem Shipbuilding Corporation, Ltd.)

December 13th, 1917

Emergency Fleet Corporation,
Washington, D. C.

Gentlemen:

Proposal Covering Supply of Additional Tonnage

Referring to conference on December 12th, 1917 between representatives of the Emergency Fleet Corporation and of this Corporation, the following proposal is submitted for the construction of additional vessels at the various shipbuilding plants of the Bethlehem Shipbuilding Corporation, Ltd.

These vessels will be built at the following Plants:

Alameda Works of the Union Plant, San Francisco, Cal.
Sparrows Point Plant, Sparrows Point, Md.
Harlan Plant at Wilmington, Del.
Moore Plant at Elizabeth, N. J.
Quincy Works of the Fore River Plant, Quincy, Mass.

Because of the unprecedented conditions surrounding the Labor and Material market, it is impracticable to estimate within a reasonable percentage what will be the actual cost of construction, and it is therefore impossible to submit fixed prices for any of these vessels, except upon a basis so far above estimated cost that any figure acceptable to this Company would not be acceptable to the Emergency Fleet Corporation. It is proposed, however, that they be constructed on the basis of actual cost plus a fee, with an agreed upon probable cost, this Company to be paid in addition to the fee one-half of any saving that may be made below this cost figure, and with the further provision that the estimated cost figure will be increased due to any increase in rates of wages that may be approved by the Emergency Fleet Corporation. The definition of cost and the general terms of the contract so far as applicable, to be the same as those for the eighty-five destroyers, contracts for which were signed on

December 6th, 1917, by the Navy Department and this Company. The basis of fees and estimated cost to be such as to offer a reasonable probability of a net earning after paying all War and Excess Profit taxes as today existing, of Ten Percent (10%) of the present estimated cost of construction.

In the following proposals, it is the intention to supply so far as possible, duplicates of vessels already constructed at the various plants, rather than to adopt the so-called standard vessels of the Emergency Fleet Corporation or vessels actually built at other yards. This offers the obvious advantage of giving to each plant a class of work with which it is familiar from actual experience and for which all plans, order sheets and very often Mould Loft work is immediately available. The adaptation of plans from one Yard to another requires at best considerable work by the Draughting Room and this Company is experiencing at this time a serious shortage of this class of labor. It further necessitates the maximum amount of Mould Loft work, and here again at nearly all of its Yards the total output is dependent on the capacity of the Mould Loft to supply the necessary information to the Shipyard.

It is not desirable to concentrate a considerable number of special type ships at a single Yard as here again the volume of certain classes of labor would seriously limit the total output. To illustrate this point—it is much better from the standpoint of total production to call on the Harlan Plant for say three 7,500 ton Tank Vessels and three 5,000 ton cargo ships, rather than to attempt to build say five 7,500 ton tank vessels. The latter type require a maximum of staple work, riveting, testing and pipe work, and

the fact that skilled men in all of these trades cannot be obtained, would result in slowing down the total tonnage output.

In the following list of vessels, various alternate combinations are proposed in the order of this Company's preference. These are, of course, subject to alteration as the Emergency Fleet Corporation may desire to meet its policy as imposed by the urgent necessity of the present situation.

It was understood in conference that the Emergency Fleet Corporation desires proposals for troop ships. Because of the enormous volume of work for the U. S. Navy at the Fore River and Union Plants, these two Yards which would normally be available for this class of vessel, are entirely unable to undertake their construction at present. The demands upon their facilities and machinery for Torpedo Boat Destroyers, totalling altogether approximately 2,600,000 H. P. leaves no possibility of handling the machinery within any reasonable period. While the requirements of this class of ship for many other highly skilled mechanics and trades other than the iron workers also directly interferes with the output of Navy Vessels, it will be noted that these two Plants are obligated to the Government for not less than 70% of their total labor capacity.

The Moore Plant is only available for vessels of 325′ in length and less, while the facilities of the Harlan Plant are not suited to the construction of vessels of the size of these proposed transports.

The Sparrows Point Plant has only two slips that can take ships of 525′ or over and four slips that will handle ships between 500′ and 523′.

The size of the proposed transports, together with their estimated cost, which it is believed will be around Four Million Dollars ($4,000,000) each, renders them extremely undesirable vessels as part of the programme for the Sparrows Point Plant. The available facilities within the next eighteen (18) months will permit the building of nine (9) 10,000-ton cargo vessels of the type there under construction for the Emergency Fleet Corporation, duplicates of Hulls 174 and 175, 12-knot, two-deck—shelter deck general cargo steamers. If, on the other hand, two transports were undertaken by the Sparrows Point Plant, the number of this type of cargo vessel that could be undertaken would be three or a maximum of four thereby decreasing the total number of vessels turned out by either four or five from the number that would be produced on the basis of all cargo vessels.

The various Plants of this Company are equipped to handle the work for which proposals are submitted, with the following minor exceptions:

The Moore Plant, for additional crane and shipyard facilities, requires an expenditure of $100,000.00.

The Harlan Plant, for additional air compressors, the extension of an existing building slip, and miscellaneous equipment, $125,000.00.

The Sparrows Point Plant, for additional air compressors, machine shop tools, etc., $300,000.00.

The Alameda Works of the Union Plant, for miscellaneous shipyard and crane equipment, $300,000.00.

This proposal is based upon the Emergency Fleet Corporation paying for the above improvements at

their actual cost after each improvement has been passed on and authorized by them, and that the final value at the completion of the contract be adjudicated by an Arbitration Board, one member to be appointed by the Emergency Fleet Corporation, one by this Company, and the third to be chosen by these two members, and that this Company have the option of purchasing these improvements at the time at the value established by this Arbitration Board; otherwise the improvements are to be removed at the expense of the Emergency Fleet Corporation, and the Plant to be restored to its previous condition.

It is this Company's expectation that the vessels herein proposed will be completed within eighteen (18) months from January 1st, 1918, but while it undertakes to use its best endeavors to complete them with the utmost vigor and dispatch, taking account of the requirements of Navy contracts in Yards where vessels are building for the Navy Department, it is not willing to assume any penalties for failure to perform, nor does it request any premiums or anticipated completion.

This Company has contracts with the Midvale Steel & Ordnance Company, dated March 29th, 1917, and the Central Iron & Steel Company, dated March 19th, 1917, for a total of 6,850 tons of steel plates and marine boiler steel, less than 500 tons of which is marine boiler steel, at Six Cents (6c) per pound for the steel plates and Fifteen Cents (15c) per pound for the boiler steel, which are firm contracts, and which steel it is obligated to take for use in Merchant Vessels. Since the entry of the Emergency Fleet Corporation into the field of ship purchases and since its commandeering order forbidding the

sale of ships to any other parties, this Company's proposal is based on the understanding that it will be allowed to use this amount of steel in its various vessels at the prices covered by its contracts, namely, Six Cents (6c) for Steel Plates and Fifteen Cents (15c) per pound for Boiler Steel.

Union Plant: In addition to the vessels commandeered by the Emergency Fleet Corporation; and also in addition to the four stock ships that are now under negotiation, the Union Plant will undertake the construction of:

1st. Six (6) 11,800-ton dead weight, single deck shelter deck cargo vessels, 3,000 H. P., 11 knots speed, duplicates of Hulls 162 and 163, commandeered by the Emergency Fleet Corporation: or

2nd. Three (3) 11,800-ton cargo vessels, as above specified, and Three (3) 10,100-ton tank vessels, about 2,600 Indicated H. P., 11 knots speed, duplicates of Hull 140, Commandeered by the Emergency Fleet Corporation August 3rd last, and completed on October 6th, 1917: or

3rd. Five (5) 10,100-ton tank vessels as above specified.

The first of these vessels would be laid down during the Summer of 1918, and all of them would be completed by July 1, 1919.

Sparrows Point Plant: In addition to the ships commandeered by the Emergency Fleet Corporation, and, in addition to one stock ship that is now under negotiation, the Sparrows Point Plant will undertake the construction of:

1st. Nine (9) 10,000-ton dead-weight general cargo vessels, two decks and shelter deck, machinery amidships, 4,000 H. P., 12 knots speed, duplicates of Hulls 174 and 175, commandeered by the Emergency Fleet Corporation on August 3rd last; or

2nd. Five (5) cargo vessels the same as the above and three (3) tank vessels, duplicates of Hull 440, built at the Harlan Plant, approximately 7,500 tons dead weight, 11 knots, the plans of which it is understood have been adopted by the Emergency Fleet Corporation as the standard for this size and type of vessel; or

3rd. Four (4) 10,000-ton cargo vessels as above specified and three (3) 9,100-ton tank vessels, 2,750 indicated H. P., 11 knots, of the type of Hulls 268 and 269, building at the Fore River Plant and commandeered by the Emergency Fleet Corporation on August 3rd last; or

4th. Seven (7) tank vessels of the type described under the third proposal, i. e., 9,100-ton dead weight capacity.

If the Emergency Fleet Corporation prefer, the 10,000-ton tank vessels of the type proposed for the Union Plant, could be substituted for the 9,100-ton vessels above specified.

The first of these vessels will be laid down April next and all will be completed not later than July 1st, 1919.

Harlan Plant: In addition to the vessels commandeered by the Emergency Fleet Corporation and exclusive of the two 7,500-ton tank vessels that it is understood the Emergency Fleet Corporation desires to substitute for Hulls 450 and 451, con-

tracted for with the Savannah Line, the Harlan Plant will undertake the construction of:

1st. Four (4) 7,400-ton, 11 knots, 2,500 H. P. general cargo vessels, two decks—three-island type, duplicates of Hull 169 building at the Sparrows Point Plant, and commandeered by the Emergency Fleet Corporation on August 3rd last; or

2nd. Three (3) cargo vessels as above specified, and one (1) tank vessel (in addition to the two substituted for the Savannah Line vessels), duplicate of Hull 440, approximately 7,500 tons dead weight, 11 knots, built at this Plant, the plans of which it is understood have been adopted by the Emergency Fleet Corporation as the standard for this size and type of vessel.

It is expected that the first of these additional vessels will be laid down during the Summer of 1918, and all will be completed by July 1st, 1919.

Moore Plant: In addition to the vessels commandeered by the Emergency Fleet Corporation, and also in addition to Hull 117, the change of which from a cargo vessel to a tank vessel is under negotiation between the Emergency Fleet Corporation and this Company, the Moore Plant will undertake the construction of:

1st: Six (6) cargo steamers, duplicates of Hulls 115 and 116, single deck, with Poop, Bridge and Forecastle, 1,750 H. P., 11 ¼ knots, 3,800 tons dead weight; or

2nd. Three cargo vessels as above specified and three (3) tank vessels, duplicates of modified Hull 117 mentioned above.

The first of these vessels would be laid down March 1st, 1918, and all of them would be completed by July 1st, 1919.

In addition to the above, this Plant can undertake the building of Six (6) Tugs of the smaller type designed by the Emergency Fleet Corporation, the first to be laid down February 1st, 1918 and the last to be completed July 1st, 1919.

The larger tugs designed by the Emergency Fleet Corporation could be substituted for some of the cargo and tank vessels above proposed, if so desired.

Fore River Plant: In addition to the vessels commandeered by the Emergency Fleet Corporation, the Fore River Plant will undertake the construction of:

1st. Four (4) 8,300-ton dead weight, two decks, three island type cargo vessels, machinery amidships, 2,500 H. P., 10 ½ knots speed, duplicates of Hulls 272 and 273 building at this Plant and commandeered by the Emergency Fleet Corporation on August 3rd last; or

2nd. Three (3) 9-100-ton Tank Vessels, duplicates of Hulls 268 and 269, 2,750 indicated H. P., 11 knots, built at this Yard, and commandeered by the Emergency Fleet Corporation on August 3rd last.

This proposition is dependent on the Navy Department continuing to allow the Battle Cruiser slip to be used for the construction of Merchant vessels. This Yard will have, including this Battle Cruiser slip, three ways available for Merchant construction, and the above number of vessels will be decreased by one if this slip were to be appropriated to Navy work.

The first of these vessels will be laid down May 15th next and all will be completed not later than July 1st, 1919.

Until the Emergency Fleet Corporation has settled on the types and sizes of vessels that it may desire to order from us for construction at the above Plants, no definite proposals as to fees per ton and estimated costs are submitted.

If the proposals that are listed first in the case of each Yard are accepted, they provide for the following tonnage:

Union Plant	6	11,800 ton ships	70,800 tons
Sparrows Point	9	10,100 ton ships	90,900 tons
Harlan Plant	4	7,400 ton ships	29,600 tons
Moore Plant	6	3,800 ton ships	22,800 tons
Moore Plant	6	Tugs	
Fore River Plant	4	8,300 ton ships	33,200 tons
A total of	35	vessels, to total of	247,300 tons

to be completed, in addition to all commandeered vessels and stock vessels, prior to July 1st, 1919.

It is requested that the proposals in this letter be considered immediately and that representatives of this Company be called in conference, with a view to settling the Emergency Fleet Corporation's requirements for vessels from its Yards, at the earliest practicable date.

Respectfully,

Bethlehem Shipbuilding Corporation, Ltd.

By J. W. Powell,
Vice President.

EXHIBIT G-105

BETHLEHEM SHIPBUILDING CORPORATION, LTD.
South Bethlehem, Pa.

December 14th, 1917.

Emergency Fleet Corporation,
Washington, D. C.

Gentlemen:

This Company submitted a letter dated December 13th, 1917 proposing to supply additional tonnage from its various Plants, and on Pages 8 and 9 listed the additional vessels that could be constructed by this Company's Harlan Plant, Wilmington, Del.

In the conference yesterday with a representative of the Emergency Fleet Corporation, instructions were issued to submit proposals for two (2) additional 7,500-ton dead weight, 11 knot, tank vessels, duplicates of Hull 440, built at the Harlan Plant, instead of Hulls 450 and 451, commandeered by the Emergency Fleet Corporation, the construction of which was stopped by its order, and contracts for which we are instructed are to be cancelled.

It was further understood at this conference that the Harlan Plant would be allowed in full for any expenditures made to date on these Hulls, with the understanding that as much of the material as practicable would be used in later contracts and a proper allowance made the Emergency Fleet Corporation for any such material utilized, the disposition of unused material to be taken up with the Emergency

Fleet Corporation at the completion of the contracts for the Oil Tank Vessels and other additional tonnage now under negotiation between the Emergency Fleet Corporation and the Bethlehem Shipbuilding Corporation, Ltd., for construction at its Harlan Plant.

Further instructions were issued to submit statement of cost to date on these contracts. This will be prepared and forwarded at an early date.

With reference to the two Tank Vessels to be undertaken in place of Hulls 450 and 451, these will be built upon the same terms and conditions as may be agreed upon in connection with the additional tonnage, as proposed in our letter of December 13th, 1917, covering construction at all of this Company's Plants, thus increasing the total number of vessels as listed to thirty-seven and the total tonnage to 262,300 tons.

It is requested that this proposal be considered in connection with those in our letter of the 13th instant.

Respectfully,

Bethlehem Shipbuilding Corporation, Ltd.,

By J. W. Powell,
Vice President.

EXHIBIT G-107

BETHLEHEM SHIPBUILDING CORPORATION, LTD.
South Bethlehem, Pa.

December 14th, 1917.

Emergency Fleet Corporation,
Washington, D. C.

Gentlemen:

Subject: Stock Vessels.

Referring to conferences on December 12th and 13th, 1917, between representatives of the Emergency Fleet Corporation and of this Company, on the subject of the completion and delivery of stock vessels at this Company's Union Plant, San Francisco, Cal., and Sparrows Point Plant, Sparrows Point, Md.:

Hulls 150, 151, 153 and 170 at the Union Plant, and Hull 176 at the Sparrows Point Plant were undertaken by the respective Plants as stock vessels.

Hull 151 is 11,700 tons dead weight, two deck and shelter deck freighter, with Triple Expansion Reciprocating Engines, 2800 H. P., three Scotch Boilers, speed 11 knots.

Hulls 150 and 153 are 11,800 tons dead weight, two deck and shelter deck freighters, with Curtiss Turbine Reduction Gears, speed 11 knots, 2600 H. P., three Scotch boilers.

Hull 170 is a single deck shelter deck freighter, dead weight 12,000 tons, 3000 H. P., 11 knots speed, duplicate of Hulls 162 and 163, commandeered by the Emergency Fleet Corporation, except that Westinghouse Turbine Reduction Gear is installed instead of Curtiss.

Hull 176 at Sparrows Point Plant is a two-deck three island type general cargo vessel, dead weight 7400 tons, 2500 H. P. Triple Expansion Engines, 11 knots speed; duplicate of Hulls 169 and 170, commandeered by the Emergency Fleet Corpn. on August 3rd last.

The plans and specifications for Hulls 150, 151 and 153 are now in the hands of the Emergency Fleet Corpn., while Hull 170 (Union Plant) and Hull 176 (Sparrows Point Plant) are duplicates of vessels building for the Emergency Fleet Corporation at these respective Yards.

This Company is prepared to construct these vessels at a price of $205.00 per dead weight ton, exclusive of the cost of changes, armed guard equipment, gun foundations, magazines and other accessories that may be required by the Emergency Fleet Corporation. These latter are estimated to cost approximately $75,000 per vessel.

The four stock vessels building at the Union Plant will be delivered between July and December, 1918, and that at the Sparrows Point Plant about October, 1918.

This Company assumes all responsibility for the cost of these vessels under this form of contract, except any increase of wages made in accordance

with instructions from the Emergency Fleet Corporation.

Respectfully,

Bethlehem Shipbuilding Corporation, Ltd.,

By J. W. Powell,
Vice President.

EXHIBIT G-109

BETHLEHEM SHIPBUILDING CORPORATION, LTD.
Wilmington, Del.

December 19, 1917.

Proposal Covering Supply of Additional Tonnage

Emergency Fleet Corporation,
United States Shipping Board,
Washington, D. C.

Sirs:

On Tuesday, December 18th, 1917, in conference with the Vice-President of the Emergency Fleet Corporation and his representatives, the Bethlehem Shipbuilding Corporation, Ltd., was instructed to submit a proposal, in accordance with the terms of its letter of the 13th instant, for vessels to be built at its various yards, as follows:

THE UNION PLANT:

Five (5) Tank vessels of about 10,100 tons d. w., 2600 H. P., 11 knots reciprocating engines, oil-burning Scotch boilers, in general duplicates of Hull

#140 commandeered by the Emergency Fleet Corporation on August 3, 1917. Vessels to be complete with armed guard equipment and war zone requirements in force at this date.

SPARROW'S POINT PLANT:

Three (3) Tank Vessels of about 10,100 tons d. w., duplicates of those above described to be built at the Union plant.

And Two (2) Troop ships, in general in accordance with the Emergency Fleet Corporation's design and specifications.

HARLAN PLANT:

Three (3) Tank Vessels of about 7,500 tons d. w. (including two vessels to be built instead of two Savannah Line Ships, contracts for which have been cancelled by the Emergency Fleet Corporation), 11 knots, reciprocating engines, oil-burning Scotch boilers, in general, duplicates of Hull #440, built for the Pan-American Petroleum & Transport Co., complete with armed guard equipment and war zone requirements in force at this date.

And Three (3) Cargo Vessels of about 7,400 tons, 11 knots, 2500 H. P., reciprocating engine, coal-burning Scotch Boilers, in general, duplicates of Hull #169 building at the Sparrow's Point Plant and commandeered by the Emergency Fleet Corporation on August 3rd, 1917, complete with armed guard equipment and war zone requirements in force at this date.

MOORE PLANT:

Twenty (20) Sea-going Tugs, of about 150 ft. in length, in general accordance with the Emergency Fleet Corporation's design and specifications.

FORE RIVER PLANT:

Three (3) Tank Vessels of about 9,100 tons d. w., 11 knots, reciprocating engines, in general, duplicates of Hulls 268 and 269 commandeered by the Emergency Fleet Corporation on August 3, 1917, last complete with armed guard equipment and war zone requirements in force at this date.

With reference to the types and numbers of vessels upon which this Company is requested to submit proposals, the following comments are submitted:

1. UNION PLANT: In its letter of the 13th instant, the undesirability of placing orders for special type ships at a single yard is noted. Five (5) tank vessels at the Union Plant means a concentration of anglesmith, riveting, testing, and pipe fitting work at a single yard and at a single time, as these vessels will be on the stocks of the Alameda Works at the same time, and will seriously interfere with production. Moreover, the same classes of skilled labor are extensively required for the Destroyer and Submarine program of the Union Plant, with the result that there is every probability that the completion of the tankers will be delayed by the more urgent requirements of the Naval vessels.

2. SPARROW'S POINT PLANT: The Emergency Fleet Corporation has stated that two (2) troop ships shall be undertaken by the Sparrow's Point Works. These ships will require a large draughting force for their design, and a large force of skilled workmen for their construction. This Company has been particularly pressed for draughtsmen, and this Plant has not been able to operate at

much over 50% capacity for want of skilled workmen. It is very doubtful whether these ships can be completed within thirty (30) months, and this should be clearly understood at this time before the Sparrow's Point Plant undertakes their construction.

3. Fore River Plant: The objections stated to building of tank vessels at the Union Plant apply with equal force to the building of all tank vessels at the Fore River Plant.

4. Harlan Plant: In going over the building schedule of the Harlan Plant today, it has become evident that, because of the size of the vessels upon which proposal is requested, it will be necessary to reduce the number of tank vessels and cargo ships from three each to two each, in order to complete them within the next eighteen (18) months.

This Company's letter of December 13th proposed to construct such vessels as may be ordered by the Emergency Fleet Corporation for actual cost plus a fee, with an agreed upon base cost, this Company to be paid, in addition to the fee, one half of any saving that may be made below this base cost, and with a further provision that the said base cost will be increased, due to any increase of rate in wages that may be paid by the order of the Emergency Fleet Corporation. This would not apply in the case of the troop ships, as it is impossible to make an approximate estimate of their cost, and it is therefore proposed that, if these vessels must be built at the Sparrow's Point Plant, they shall be constructed on a straight cost and percentage basis.

The fixed fees and estimated costs of the various vessels are, as follows:

	Fee each vessel.	Estimated Cost, exclusive of fee.
10,100-ton Tank Vessel	$240,000	$2,181,600
9,100-ton Tank Vessel	220,000	1,983,800
7,500-ton Tank Vessel	175,000	1,680,000
Troop-ship	15% of cost	
7,400-ton Cargo Vessel	150,000	1,450,000
Sea-going Tugs	35,000	300,000

As stated in this Company's letter of the 13th instant, it is impracticable to estimate within a reasonable percentage what will be the actual cost of construction but, based upon a close study of the facts affecting cost, and the knowledge of increase therein in the last two years, and making allowances as seem reasonable to cover the next eighteen (18) months the period of construction of these vessels —the estimates for the 10,000-ton tank vessels and the 7,400-ton cargo vessels are, as follows:

	10,000-ton tank vessel per d. w. ton.	7,400-ton cargo vessel per d. w. ton.
Labor, materials and operating expense—	$187.50	$168.50
Administrative, Selling & General expense—	18.75	16.85
Extra cost of steel, as per page 6, Letter of December 13th, averaged over all extra tonnage—	2.50	2.50
Cost of armed guard equipment and war zone requirements—	7.00	8.00
	$215.75	$195.85
Say	$216.	$196.

The figures quoted above for the smaller tank vessels are based upon those given for the 10,000-ton vessel. Average costs have been used between East and West Coast construction to cover the 10% difference in labor costs and the 5% additional material cost for vessels built on the West Coast as compared with those in the East Coast yards.

Representatives of this Company will call on the Emergency Fleet Corporation to personally consider the subject matter of this letter, with a view to the earliest determination as to the work which it may be desired to undertake, and, it is needless to add, such orders as are given it will receive its best efforts, with a view to their completion at the earliest date consistent with obligations already assumed for the United States Navy and for the Emergency Fleet Corporation.

Yours very truly,

Bethlehem Shipbuilding Corporation, Ltd.,

By (signed) J. W. Powell,
Vice-president.

EXHIBIT G-110

December 19, 1917.

Bethlehem Shipbuilding Corporation,
South Bethlehem, Penna.

Gentlemen:

Proposal covering supply of additional tonnage

In reply to your letter of the 13th instant, and in accordance with our conference of yesterday af

terncon with your Messrs. Powell and Brown, it is requested that you submit proposals for the following program:

(a) 5—10,000 ton tankers, to be built at your Union Plant;

(b) 2—10,000 ton Union tankers, and 2—10,000 ton troop ships, to be built at your Sparrows Point Plant;

(c) 3—cargo vessels, and 1 tanker of about 7500 tons, to be built at your Harlan Plant;

(d) Such number of sea-going tugs as you believe can be promptly constructed at the Moore Plant;

(e) 3—9,100 ton tankers, to be constructed at the Fore River Plant.

All of the above vessels are to be coal burners, except the tankers and troop ships; which will be oil burners, and all are to be fitted with Scotch boilers except the troop ships.

Plans and specifications of all vessels, that you are proposing to build from your own plans and specifications, must be submitted for approval.

Very truly yours,

F. T. Bowles,
General Manager.

EXHIBIT G-112

BETHLEHEM SHIPBUILDING CORPORATION, LTD.
South Bethlehem, Pa.

December 20th, 1917.

Mr. Charles Piez, Vice President,
Emergency Fleet Corporation,
Washington, D. C.

Dear Sir:

In its letter of December 14th, the Bethlehem Shipbuilding Corporation, Ltd., offered to the Emergency Fleet Corporation, Ltd., its Hulls 150, 151, 153 and 170 building at the Union Plant; and its Hull 176 building at the Sparrows Point Plant, at a price of $205.00 per dead weight ton, exclusive of cost of changes, armed guard equipment, gun foundations, magazines and other accessories that may be required by the Emergency Fleet Corporation, these latter being estimated to cost approximately $75,000 per vessel.

The Emergency Fleet Corporation has requested further details in regard to this quotation. It is impracticable in this market to estimate within a reasonable percentage what will be the actual cost of construction, but, based upon close study of facts effecting the Shipbuilding costs and a knowledge of increases therein in the last two years, the probable cost of these vessels now building on the Pacific Coast is as follows:

Labor, Material and Operating Expenses	$ 161.50
Administrative, Selling & General Expense	16.10
Total	$177.60,

exclusive of changes, etc., as enumerated above. The asking price shows a margin of 15% beyond this estimate.

In the case of the vessel built at the Sparrows Point Plant, the estimated cost would be about $10.00 per ton less, due to lower labor and material cost in the East Coast Yards.

These vessels were undertaken by the Union and Sparrows Point Plants of this Company months before the commandeering order of August 3rd last. All risk due to unforeseen conditions was assumed by the Company, in the belief that when these vessels could be offered for short delivery they would sell at a price that would net a very large profit. Present conditions show that except for the entry of the United States into the War and the authority vested in and exercised by the Emergency Fleet Corporation to prevent sale to other customers, that this speculation would have been immensely profitable.

A large part of the material for the vessels building at the Union Plant has been assembled in the Shipyards, and a considerable percentage of the steel has been fabricated. In the case of the single stock vessel building at the Sparrows Point Plant, all of the material is ordered, but to date the only material received is about one-half of the hull plates. In the case of the Union Plant large sums of money have been invested in this material, the interest

charges on which have become a part of the cost of construction.

The Alameda Works of the Union Plant, at which its merchant contracts are now constructed, is a new and permanent Plant, built in a labor and material market that has increased the cost of construction at least 50% beyond the cost in a normal market.

It was this Company's expectations that its profits on these stock ships would justify this expenditure, by showing a return that would repay this additional construction cost. It is now faced with the War Profit and Excess War Profit Taxes, which will result in turning over to the Government the larger part of its earnings.

Wages at the Union Plant have increased 31% and a 10% attendance bonus has been recently added to further augment this increase, while inefficiency of new labor and lack of co-operation due to present unsettled labor conditions, have resulted in a total increase of at least 75% over those of a year ago.

In the East, the new Navy Yard wage scale in effect December 15th, and the general labor shortage will operate in a like manner and to substantially a like degree.

While the above facts are not susceptible of being placed in quantitative form, they are well known to all Shipbuilders. A comparison of recent prices on ships for comparatively long term delivery, and upon a basis of last May's wages, built by Yards who assemble and do not construct the greater part of the machinery and equipment, and who have small

investment in their business, would appear to fully justify the price named in this Company's letter.

Early action is requested on these contracts, to permit the construction of these vessels to proceed with the maximum dispatch.

Yours very truly,

Bethlehem Shipbuilding Corporation, Ltd.,

By J. W. Powell
Vice President.

EXHIBIT G-116

Letterhead of
BETHLEHEM SHIPBUILDING CORPORATION, Ltd.

January 3rd, 1918.

Mr. Charles Piez,
Vice President and General Manager,
Emergency Fleet Corporation
Washington, D. C.

Dear Sir:

Referring to this company's letter of the 19th ultimo, submitting a proposal covering the supply of additional tonnage, further study of this situation at the Union Plant, San Francisco, California, has showed that it will be practicable to undertake the construction of ten (10) tank vessels instead of five (5), or of six (6) additional 11,800 ton deadweight cargo vessels, a total of twelve (12) instead

of six (6) of all of these vessels to be delivered prior to July 1, 1919. This would entail the construction of additional ways and a total additional capital expenditure of about $500,000 to be financed by the Emergency Fleet Corporation as proposed in our letter of the 13th ultimo.

We further refer to my conference with the Vice President and General Manager of the Emergency Fleet Corporation on Friday the 21st ultimo. This will confirm the statement then made that while this Company cannot undertake any capital expenditures at its expense, if the terms in our proposal do not otherwise meet with the Emergency Fleet Corporation's approval, we are prepared to accept the order to construct these vessels on such terms as may be personally determined by Mr. Charles Piez, the Vice President and General Manager, and strongly urge there be no delay in placing this order, as we are making this offer because of our knowledge of the vital emergency now confronting this nation in connection with the requirements for additional merchant vessels.

Yours very truly,

Bethlehem Shipbuilding Corporation, Ltd.,

By J. W. Powell,
Vice President.

EXHIBIT G-122

BETHLEHEM SHIPBUILDING CORPORATION, Ltd.
South Bethlehem, Pa.

January 17, 1918.

United States Shipping Board,
Emergency Fleet Corporation,
Washington, D. C.

Dear Sirs:

Referring to your letter of the 5th instant with reference to Hulls Nos. 150, 151, 153 and 170, we hereby confirm the oral advice given to you by our Mr. Brown that in advising you in regard to our stock ships under construction at our Union Plant we inadvertently omitted to report that we had at said plant general plans and specifications of and had ordered some materials for two other stock vessels, to which we assigned on our books the numbers 215 and 216.

These two vessels are to be of about 11,800 tons deadweight capacity; are single deck, shelter deck, cargo vessels, and are to be fitted with Scotch boilers and reciprocating engines. They are to have a speed of about 10 1/2 knots and are to be of the following dimensions:

Length P. P.	440 feet
Moulded breadth	56 "
Moulded depth	38 "
Lloyds draft	28 " , 6 inches

and are to be classed 100 A 1 at Lloyds.

The materials ordered for these vessels consist of structural steel and anchors and chains. Orders for other materials are in course of preparation.

In accordance with our present schedule the keel of Hull No. 215 will be laid about November 1, 1918 and that of Hull No. 216 about November 15, 1918. Delivery of Hull No. 215 is scheduled for April, 1919, and of Hull No. 216 for May, 1919. If you shall decide that these two hulls are covered by your requisition order, we desire that they shall be treated in the same way and covered by contracts the same as our Hulls Nos. 150 and 153. The estimated price of each is to be $2,124,000, with a fixed profit of $212,400 for each vessel and one-half of any saving under the estimated price, as provided in such contract.

Very truly yours,
Bethlehem Shipbuilding Corporation, Ltd.,
By H. Brown,
Technical Manager.

EXHIBIT G-124

BETHLEHEM SHIPBUILDING CORPORATION, Ltd.
South Bethlehem, Pa.

February 12, 1918.

U. S. Shipping Board,
Emergency Fleet Corporation,
Washington, D. C.

Gentlemen:

Referring to this Company's letter of the 17th ultimo, advising you that two (2) stock ships were

building at its Union Plant Numbered Hulls 215-216 that had not been covered by contracts arranged between this Company and the Emergency Fleet Corporation, there are handed you herewith plans and specifications for these vessels.

With reference to Fleet Corporation's telegram requesting information on the subject of steel orders, the steel for these vessels was included in a contract made on a tonnage basis with the Carnegie Steel Company dated July 15th, 1916. The actual steel was specified in July, 1917, just prior to the expiration of the contract in order to utilize the tonnage for which this Company was under contract.

Our letter of the 17th ultimo proposed a basis upon which these ships should be taken over and so far as delivery is concerned, they can be fitted into the general program of vessels building at our Union Plant as may best suit the needs of the Fleet Corporation and keeping in view the necessity of utilizing the available steel to prevent any part of the plant from lying idle.

It is requested that this matter be given early consideration as we are anxious to close up all of these pending questions with the Fleet Corporation.

Very truly yours,

Bethlehem Shipbuilding Corporation, Ltd.,
By J. W. Powell,
Vice President.

EXHIBIT G-125

BETHLEHEM SHIPBUILDING CORPORATION, Ltd.
South Bethlehem, Pa.

February 25, 1918.

United States Shipping Board,
Emergency Fleet Corporation,
Washington, D. C.

Subject: Proposed Additional Tonnage.

Gentlemen:

Referring to our letter of December 19, 1917, submitting for the consideration of the United States Shipping Board, Emergency Fleet Corporation, proposals for the consideration of additional tonnage, and to subsequent correspondence in relation thereto—we beg to advise the Corporation that owing to the rapid increase in the supply of labor at the Sparrows Point Plant of the Bethlehem Shipbuilding Corporation, Ltd., we are prepared to consider in addition to the vessels already contracted for, the following vessels:

Four (4) tank vessels of 10,100 tons deadweight, duplicates of those now building at the Sparrows Point Plant under contract between the Bethlehem Shipbuilding Corporation, Ltd., and the United States Shipping Board, Emergency Fleet Corporation,—

And three (3) 7,400-ton cargo vessels, duplicates of those now building at the Harlan Plant under contract between the Bethlehem Shipbuilding Cor-

poration, Ltd., and the United States Shipping Board, Emergency Fleet Corporation.

Delivery of these vessels can be made as follows:

Tank Vessels.

1 vessel July 1919
1 " August 1919
1 " September 1919
1 " October 1919

Cargo Vessels.

1 vessel September 1918
1 " July 1919
1 " October 1919.

We propose to construct the above vessels for the same price and under the same terms and conditions as are embodied in the contracts now in force between our respective Corporations, except as regards deliveries given above.

We feel that in order to operate this plant with the greatest efficiency, it will be necessary to obtain additional tonnage. Otherwise, by the latter part of 1918 there will be several unoccupied ways and if the United States Shipping Board, Emergency Fleet Corporation have contracted for their full requirements, we respectfully request that we be permitted to negotiate with outside parties for the available space.

Your very truly,

Bethlehem Shipbuilding Corporation, Ltd.,
J. W. Powell,
Vice President.

EXHIBIT G-126

March 7th, 1918.

U. S. Shipping Board,
Emergency Fleet Corporation,
Washington, D. C.

Gentlemen:—

On February 25th this Company submitted a proposal for additional tonnage to be constructed at the Sparrows Point Plant of the Bethlehem Shipbuilding Corporation, Ltd.

On the 1st instant the Vice President & General Manager of the Emergency Fleet Corporation discussed by telephone with the writer the prices quoted on these vessels.

Please be advised that this Company cannot offer these vessels to the Emergency Fleet Corporation on any lower basis than that quoted in our letter above mentioned, since its mature judgment leads it to believe that a less price will not yield a living profit. However, because of its full appreciation of the Nation's desperate need of ships, it desires to repeat the offer made orally and in writing in December and January last, that it will accept the order to construct these additional vessels at such lower base price and such smaller fee as may be personally determined by Mr. Charles Piez, Vice President and General Manager, with proviso in the present instance that the contracts will otherwise be duplicates of those for new construction already signed by the Bethlehem Shipbuilding Corporation, Ltd., and the Emergency Fleet Corporation.

It is strongly urged that there be no delay in placing this order as the date of the completion of the smaller vessels in its proposal will be delayed to the same extent as is the settlement of this question.

Very respectfully,

Bethlehem Shipbuilding Corporation, Ltd.,

By J. W. Powell,
Vice President.

EXHIBIT G-127

March 18, 1918.

Bethlehem Steel Corporation
South Bethlehem, Pa.

Gentlemen:

In reply to your letter of the 7th instant, relative to your proposal of February 25th, covering the construction of four 10,100 ton tankers and three 7,400 ton cargo vessels at your Sparrows Point plant, the said vessels to be similar to those you are now building for the Board under contracts Nos. 179 and 178, respectively, you are hereby given an order for the construction of the above vessels, under the terms of the said contracts with the exception that the estimated base cost in the case of the tankers is to be reduced to $2,000,000 and in the case of the cargo vessels to $1,295,000; the fee contemplated by your present contracts, in both instances, to remain the same.

Kindly acknowledge receipt of this letter and

signify your acceptance or rejection of the above order.

Very truly yours,

(Signed) Charles Piez,
Vice President and General Manager.

EXHIBIT G-128

U. S. SHIPPING BOARD,
Emergency Fleet Corporation,
Washington, D. C. April 8, 1918.

Bethlehem Shipbuilding Corporation,
South Bethlehem, Pa.

Gentlemen:

In reply to your letter of January 17th offering to construct two of your stock cargo vessels of about 11,800 tons d. w. capacity, for the Board, you are hereby given an order, as a preliminary step, to entering into contract with the Corporation, for the construction of the above vessels; the vessels to be constructed under a cost plus fee basis form of contract, the estimated base price to be $2,000,000.00 per vessel, with a minimum fee of $200,000.00 per vessel. Any saving in cost to be divided equally between the Corporation and yourself.

Kindly acknowledge receipt of this letter. If the above order is accepted a draft of contract will be forwarded you for signature at an early date.

Very truly yours,

Charles Piez,
Vice President and General Manager.

EXHIBIT G-130

Letterhead of
BETHLEHEM SHIPBUILDING CORPORATION, Ltd.

April 16, 1918.

United States Shipping Board,
Emergency Fleet Corporation,
Washington, D. C.

Gentlemen:

Your letter of the 8th instant replies to ours of January 17th last, and as a preliminary step to entering into contract with the Corporation for the construction of two stock vessels known as Hulls 215 and 216 to be constructed at the Union Plant, the Corporation offers an estimated base price of Two Million ($2,000,000) Dollars per vessel and a minimum fee of Two Hundred Thousand ($200,000) Dollars.

This Company considers these prices as inadequate to afford it a proper remuneration for its efforts. In connection with prices recently paid for vessels of similar size building on the East Coast, we were informed a base price of about One Million Nine Hundred Thousand ($1,900,000) Dollars was acceptable to the Fleet Corporation. In comparing this price with the cost of vessels built on the West Coast, the following items of additional cost in connection with the stock ships to be built at our Union Plant should be noted:

1st. It is figured that the additional freight to the Union Plant as compared to one of our Eastern

Yards on a vessel of this size amounts to about $42,000,

2nd. The net cost of all material entering into the ship, averages somewhat higher than on the East Coast a difference that we estimate at about $20,000.

3rd. Taken from our average returns as to the cost per hour of labor in our East and West Coast yards the cost of labor on the Pacific Coast is still, on a vessel of this type, in the neighborhood of $6 per deadweight ton higher than on the East Coast a difference of approximately $70,000.

The total of items 1-2 and 3 therefore shows a difference of excess cost on the West Coast as against the East Coast of One Hundred Thirty Two Thousand ($132,000) Dollars.

In view of the above, it is strongly urged that no reduction be made in our original base price, but as stated in our conference yesterday, in order to prevent further delay in the construction of these vessels, we will accept as a base price on them Two Million Seventy Five Thousand ($2,075,000) Dollars and a minimum fee of Two Hundred Seven Thousand Five Hundred ($207,500) Dollars, any saving in the cost to be divided equally between the Corporation and this Company—and with the further understanding that the contract for these vessels will be in all other respects the exact duplicates of those executed for Hulls 150—153 and 170 building at our Union Plant.

Very truly yours,

Bethlehem Shipbuilding Corporation, Ltd.,

By J. W. Powell,
Vice President.

EXHIBIT G-131

WESTERN UNION
Telegram

1918 Apr 18 PM 6 54

B549NY 38
South Bethlehem Penna 635P 18

Chas A Piez

United States Shipping Board No 1319 F St Washington DC our letter to be handed you Friday morning contains error -please change dates from July 1918 to July 1919 and from January 1919 to Jany 1920

BETHLEHEM SHIPBUILDING CORPN.

EXHIBIT G-132

BETHLEHEM SHIPBUILDING CORPORATION, Ltd.
Bethlehem, Pa.

April 18, 1918.

United States Shipping Board,
Emergency Fleet Corporation,
1319 "F" Street,
Washington, D. C.

Attention: Mr. Charles Piez, Vice President & General Manager.

Gentlemen:

We have been checking over our schedules of construction at the various Plants of the Bethlehem

Shipbuilding Corporation, Limited, with a view of submitting proposals to the United States Shipping Board, Emergency Fleet Corporation for tonnage in addition to that already contracted for or in process of settlement, with the result that we find we can offer to construct and deliver from our various Plants, the following vessels for delivery between July 1919 and January 1, 1920.

Fore River Plant.

Three (3) Tank Vessels of about 9100-tons dead weight, duplicates in all respects of those contracted for with the United States Shipping Board, Emergency Fleet Corporation, its contract No. 183 dated December 31, 1917. The price, terms and conditions of contracts to remain the same as in said contract.

Moore Plant.

Ten (10) tug boats, duplicates in all respects of those contracted for with the United States Shipping Board, Emergency Fleet Corporation, its contract No. 184, the price, terms and conditions of contracts to remain the same as for the last 14 boats ordered.

Or, as an alternative to the above, we can construct and deliver three (3) cargo vessels of about 4800 tons dead weight under the same terms and conditions of contract as entered into for other cargo vessels contracted for with us by the United States Shipping Board, Emergency Fleet Corporation. The price however, to be determined after we have had an opportunity to prepare plans and specifications and estimate of cost.

Harlan Plant.

Three (3) 7500-ton tank vessels, duplicates in all respects of the 7500-ton tank vessels being con-

structed at this Plant under the Shipping Board's contract No. 178. The price, terms and conditions to be the same, and:

Seven (7) 5100-ton cargo vessels in accordance with plans and specifications to be submitted within the course of the next few days and to be constructed under the same terms and conditions embodied in contract 178 for the 7400-ton cargo vessels being constructed at this plant, excepting that price, based on wage schedule of January 3, 1918, will be $1,045,000.00 each and fee will be $105,000.00 each.

The proposal for the work at this Plant is submitted with the understanding that the United States Shipping Board, Emergency Fleet Corporation, will provide additional facilities which it now has under consideration, in reference to lighting of Plant, railway and electric locomotive along side building slip and additional fire protection.

Sparrows Point.

Three (3) 10,100-ton tank vessels and three (3) 7400-ton cargo vessels, duplicates in all respects of those ordered by the United States Shipping Board, Emergency Fleet Corporation in its letter of March 18, 1918, contracts for which have not yet been executed by the United States Shipping Board, Emergency Fleet Corporation but which were executed by us on March 18, 1918 and are now before the Corporation for its action. The price, fee and other terms and conditions of the contracts to be the same.

Union Plant.

Six (6) 10,100-ton tank vessels, duplicates in all respects of those under contract with the United States Shipping Board, Emergency Fleet Corpora-

tion, its contract No. 177, the price, terms, and conditions to remain the same. And:

Six (6) 11,800-ton cargo vessels, duplicates in all respects of Hulls 215 and 216 being constructed at the Union Plant and for which negotiations are now under way with the United States Shipping Board, Emergency Fleet Corporation. The price, terms and conditions to be as agreed upon for Hulls 215 and 216.

We would suggest for your consideration, as a means for economizing time, that in the event of the acceptance of the proposals contained herein, we receive an order by letter to be attached to the previous contracts extending the number of vessels to be constructed under those contracts, from the original number, applicable to any of the proposed vessels, which may be selected from the proposals contained herein. This would apply to the vessels at the Sparrow's Point Plant, at the Moore Plant in the case of the tug boats, at the Harlan Plant in the case of the tank vessels, at the Fore River Plant and at the Union Plant.

We respectfully request an early reply to this communication in order that expenses and time may be reduced to a minimum, since it will be possible for us to put these additional vessels through our Drafting Room, Order Department, Purchasing Department and Material Division in a large part, along with the vessels which we are now constructing for the Shipping Board.

Very truly yours,

Bethlehem Shipbuilding Corporation, Ltd.,

H. Brown

Technical Manager.

EXHIBIT G-133

UNITED STATES SHIPPING BOARD
Emergency Fleet Corporation
Washington

April 22nd, 1918.

Bethlehem Shipbuilding Corporation,
South Bethlehem, Pa.

Gentlemen:

In reply to your letter of the 16th instant, stating that you consider the estimated base cost named in our letter of the 8th instant too low to insure you a workable profit, and asking that it be increased to not less than $2,075,000 with a corresponding minimum fee of $207,500 per vessel, you are advised that in view of the statements contained in your above letter the Corporation agrees to the increase in question. Accordingly the estimated base price stated in our letter of the 8th instant should be modified to read $2,075,000, with a corresponding increase in minimum fee to $207,500 per vessel.

Very truly yours,

Charles Piez
Vice President and General Manager

EXHIBIT G-134

April 30, 1918.

Bethlehem Shipbuilding Corporation,
South Bethlehem, Pa.

Gentlemen:

In reply to your letter of the 18th instant, relative to contracts for certain additional vessels necessary to carrying the building program at your several plants through 1919, you are hereby given an order, as a preliminary step to entering into contract with the Corporation for the construction of the following vessels, under the terms and conditions hereinafter set forth:

Fore River Plant: Three 9100 ton tankers, at cost plus a minimum fee of $185,000, with an additional fee of one-half the savings, if any, between the actual cost and the estimated base cost of $1,850,000.

Sparrows Point Plant: Three 10,100 ton tankers, at cost plus a minimum fee of $200,000 with an additional fee of one-half the savings, if any, between the actual cost and the estimated base cost of $2,000,000.

Union Plant: Six 10100 ton tankers and six 11800 tons cargo vessels, the said vessels to be constructed for cost plus a minimum fee of $210,000 and $207,500 respectively, with an additional fee of one-half the savings, if any, between their respective actual cost and the estimated base cost of $2,100,000 and $2,075,000 per vessel.

The general terms of the contract covering the construction of the above vessels to be similar to those you now have with the Corporation.

The question of three 7500 ton tankers and seven 5100 ton cargo vessels, to be constructed at your Harlan plant and the three 7400 ton cargo vessels to be constructed at your Sparrows Point plant, has been held in abeyance pending further investigation relative to the estimated base cost of the vessels in question. The question of additional tugs to be constructed at your Moore plant has also been held in abeyance pending decision as to the type of tug to be constructed.

Kindly acknowledge receipt of this letter. If the terms and prices mentioned therein are satisfactory it is suggested that you prepare a contract draft similar to your present contract and forward it to the Corporation for execution.

Very truly yours,

Charles Piez
Vice President.

EXHIBIT G 135

May 15, 1918.

Bethlehem Shipbuilding Corporation, Ltd.,
Bethlehem, Pennsylvania.

Gentlemen:

In further reply to your letter of April 18th, relative to contracts for certain additional vessels to

complete the 1919 building program at certain of your plants and with reference to our letter of April 30th, stating certain of the vessels in contemplation had been held in abeyance pending further investigation relative to the estimated base cost, etc., you are advised that in view of our recent discussion with you and confirming our understanding reached at that time, you are hereby given an order as a preliminary step to entering into contract with the Corporation for the construction of the following vessels, under the terms and conditions hereinafter set forth:

Harlan Plant: Three (3) 7500 ton tankers and seven (7) 5100 ton cargo vessels. The said vessels to be constructed at cost plus a minimum fee of $156,000 and $98,000, respectively, with an additional fee of one-half the savings, if any, between the respective actual cost of the vessels and the estimated base cost of $1,560,000 and $980,000 per vessel.

Sparrows Point Plant: Three (3) 7400 ton cargo vessels at cost plus a minimum fee of $125,000 with an additional fee of one-half the savings, if any, between the actual cost per vessel and the estimated base cost of $1,250,000.

Moore Plant: Ten (10) ocean-going tugs at cost plus a minimum fee of $30,000 per tug, with an additional fee of one-half the savings, if any, between the actual cost per tug and the estimated base cost of $300,000.

The general terms of the contract covering the construction of the above vessels are to be similar to the other contracts you now have with the Corporation.

Kindly acknowledge receipt of this letter. If the terms and prices mentioned therein are satisfactory, it is suggested, as a means of saving time, that you prepare a contract draft similar to your present contract and forward it to the Corporation for execution.

Very truly yours,

H. Coonley,
Vice President.

EXHIBIT G-150

EXTRACT FROM PROCEEDINGS
OF THE
UNITED STATES SHIPPING BOARD

June 9, 1920.

RESOLVED, That the power and authority relating to the rights and liabilities of the Emergency Fleet Corporation vested in the Shipping Board by subsection "c" of Section 2 of the Merchant Marine Act approved June 5, 1920, be exercised by the Shipping Board through and by the United States Shipping Board Emergency Fleet Corporation, to which is hereby delegated the exercise of such power and authority, in accordance with Section 35 of the above-mentioned act.

The foregoing resolution was adopted.

EXHIBIT G-154

U. S. v. BETHLEHEM SHIPBUILDING CORPORATION

Description of Graph

1. Approximate probable cost of a tanker of 9100 D. W. T. was determined as follows:

(a) By applying to the cost of material in what was known under the Company's accounting system as Job 12, comprising in general the structural hull of the vessel as reported on Hull 253, to wit, $150,000, an equation factor of 2.66, producing a figure of $399,000. The equation factor was determined as follows: delivered cost of steel plates for Hull 253, $135. base per hundred pounds; estimated delivered cost of steel plates, including estimated increase of 10 cents over current delivered cost of plates, $3.59 base per hundred pounds; $3.59 ÷ 1.35 = 2.66.

(b) By applying to the cost of the remaining material on Hull 253 as reported, to wit, $239,000, an equation factor of 1.75, producing a figure of $418,000.

(c) By applying to the direct labor cost of Hull 253, reported as $326,000, an equation factor of 1.68, produced by dividing the average hourly earnings of direct labor on such Hull (38.75¢) into estimated earning rate under Navy Yard rates, which the Company had then been directed to put into effect at its East Coast Yards (50¢) and multiplying result by 1.30 (the addition of 30% being to cover increased

cost resulting from inefficiency of labor,) resulting in a figure of $548,000.

(d) By addition to the foregoing of 60¢ of the estimated direct labor cost as thus determined to cover the cost of plant operating expenses and administrative and general expenses including depreciation, taxes and insurance, producing a figure of $329,000.

(e) By adding to the sum of the foregoing items ($1,694,000) 10% for equipment which the contractor would be required to furnish and which on Hull 253 was furnished by the owner, for special equipment required by the Government, such as armed guard equipment and war zone requirements, and for contingencies, producing a figure of $1,863,000.

2. To determine the approximate probable cost of a tanker of 14,950 D. W. T., corresponding to Hulls 158 and 159, which were of recent construction, the same equation factors were applied to the cost of material and labor as reported for these hulls, and the same percentage additions made for plant operating expense, etc., equipment and contingencies. Labor and material cost as reported for these hulls were approximately the same per ton of light weight of ship as on Hull 253. The equation factors were applied to the following reported items of cost: $267,000 for materials on Job 12, $328,000 for other materials and $451,000 for labor cost. The approximate probable cost so determined was $2,736,000.

3. Approximate probable cost of tankers of other sizes to be built in East Coast Yards was de-

termined by curve drawn throught the two spots thus fixed.

4. Approximate probable cost of tankers to be constructed in West Coast Yards was estimated to be approximately 5% higher than for the construction of the same size and type of ships in the East Coast Yards, corresponding curve plotted on the graph being the line marked "(Tankers) West—East plus 5%".

5. It was estimated that the cost of a tanker of 10,000 D. W. T. would be about 15% more than the cost of a cargo vessel of the same tonnage, and that the cost of a tanker of 15,000 D. W. T. would be about 10% more than the cost of a cargo vessel of the same tonnage. The points representing this differential in cost were spotted on the graph from the line representing East Coast tankers and through such points the line marked "Cargo East" was constructed. From this line by an allowance of 5% for increased cost on the West Coast the line marked "Cargo West—East plus 5%" was constructed.

EXHIBIT G-155

In November of 1917, Mr. Harry Brown, who is the technical manager of the Bethlehem Shipbuilding Corporation, was informed by Mr. Powell that the Corporation would be expected to build ships for the Fleet Corporation and was instructed to prepare form estimates on approximate cost. At the time, neither Mr. Brown nor Mr. Powell knew

exactly what type or size of vessels they would be expected to build, but on the assumption that they would be expected to build tankers and cargo ships, Brown set about to arrive at some basis for estimating the probable cost of a tanker or cargo ship of any size which might be ordered.

As the basis of his estimate he took the cost on Hull 253 which was a 9,100 ton tanker which had recently been completed at the Fore River yard.

He ascertained from the Accounting Department that the cost of the material in Hull 253 was approximately $389,000, of which approximately $150,000 was in what is known as Job 12, which comprises a structural hull and the bulk of which is steel plates.

The average delivered price of plates that went into Job 12 was 1.35 base. The War Industries Board price for plates up to January 1, 1918, was 3.25 base, f. o. b. Pittsburgh. The current freight rate from Pittsburgh to Fore River was 24c. To this figure Brown added 10c to take care of the probable increase in freight rates and increased cost of delivery, making a delivery price of 3.59 which is 2.66% of the delivered price of steel plates which went into Hull 253. Applying this percentage, he estimated the material cost of Job 12 for a 9,100 ton tanker to be built during 1918, at $399,000.

The recorded cost of the material other than Job 12 on Hull 253 was approximately $239,000.

To arrive at an estimate of the probable cost of material other than Job 12, he obtained from the Purchasing Department information as to the current prices on some of the major items and made a

comparison of current prices with the prices of corresponding items in Hull 253. On the basis of this information and taking into consideration the difference in cost of steel, he arrived at the factor of 1.75. Multiplying $239,000 by 1.75 gave a figure of $418,000 as the estimated cost of material other than Job 12, or a total estimated cost of material of $817,000.

The next item which he considered was labor cost. He ascertained that the average hourly earnings of direct labor on Hull 253 was 38.75 per hour. He estimated that the average earning rate under the Navy Yard scale would amount to 50c per hour, or an increase of 29% over the earning rate of direct labor on Hull 253. To this he added 30% as an allowance for anticipated decrease in efficiency and using these figures he obtained the following equation: .50 cents (Navy Yard Rates) divided by 38.75 (the rate on Hull 253) x 1.30 (the factor of decreased efficiency) = 1.68. The total direct labor cost on Hull 253 was $326,000. Applying to this, the factor 1.68 gave the figure of $548,000 as the estimated direct labor cost on a similar ship. He says that Bethlehem was instructed in November to put into effect the Navy Yard rate at the Fore River Yard.

The next item considered was plant operating expense, administrative and general expense, including depreciation, taxes and insurance. In arriving at an operating percentage to cover these items he took into consideration, on the one hand, that the percentage of administrative and general expense would decrease as direct labor increased, but that percentage of plant operating expense would not decrease in the same proportion. My impression is

that past experience had shown that plant operating expense, inclusive of administrative, selling and general and inclusive of taxes, depreciation and insurance at Fore River, had averaged about 65% of the direct labor cost. Taking into consideration the factors above mentioned, Brown used a figure of 60% of direct labor cost to cover plant operating expense together with administrative and general expense, including taxes, insurance and depreciation. Applying this percentage to the direct labor cost of $548,000, gave a figure of $329,000 as the estimated cost of these items, which added to the figures previously given, gave a total of $1,694,000 as representing the estimated cost of material, labor, operating expense and overhead for a 9,100 ton tanker similar to Hull 253.

These figures did not include equipment supplied by the owner on Hull 253, such as hotel equipment, navigating outfit nor special equipment required by the Fleet Corporation, such as armed guard equipment and war zone requirements. To cover these items and to make allowance for other contingencies, he added a flat 10% making a total estimated cost of $1,863,000. (This is the item noted on the diagram as the 10% contingent).

To arrive at the estimated cost of a tanker of another size, he took Hulls 158 and 159 which had recently been completed at Sparrows Point, each being 14,950 ton tankers. He ascertained that the labor and material cost per ton of light weight of a ship were approximately the same on Hulls 158 and 159 at Sparrows Point as on Hull 253 at Fore River and he accordingly applied the same factor which he had applied to Hull 253, which gave him an approximate cost for labor, material and operat-

ing expense, etc. of $2,488,000, to which he added 10% for contingencies, including armed guard, etc., making a total of $2,736,000.

Having ascertained the estimated cost of two tankers of different sizes, he constructed a chart by putting down a point to indicate the cost of a 9,100 ton tanker and another point to indicate the cost of a 14,950 ton tanker and by drawing a curve between these two points, he added a curve which gave him an approximate cost on a tanker of any size built on the East Coast.

To arrive at the cost of similar vessels on the West Coast, he assumed that labor rates were approximately 10% higher and that the delivered cost of steel was approximately 50¢ per cwt. more than on the East Coast (on account of Freight). On the basis of these estimates he concluded that the cost on the West coast would be approximately 5% higher than on the East coast and to represent the West coast cost he plotted a curve indicating the flat increase of cost of 5% over the cost on the East coast.

To arrive at the cost of a cargo vessel, he estimated on the basis of his experience that a tanker of 10,000 tons D. W. cost about 15% more than a cargo vessel of the same tonnage and that a tanker of 15,000 tons cost about 10% more than a cargo vessel of the same tonnage. Using these percentages, he plotted another curve representing the estimated cost of cargo vessels on the East coast and by adding to this a flat 5% another curve representing the estimated cost of cargo vessels on the West Coast.

EXHIBIT G-159

BETHLEHEM SHIPBUILDING CORPORATION, LIMITED
New York, N. Y.

October 25, 1928.

Mr. W. W. Robison,
15 Broad Street,
New York City.

Dear Mr. Robison:

With reference to your letter of October 11th, 1928 addressed to Mr. Geiss, of which a copy was sent me, calling our attention to a question raised by representatives of the Fleet Corporation as to a discrepancy between the quantity of plates and shapes for Job 12 for Hulls 253-4 mentioned in a memorandum from Mr. Schulze to Mr. Brecht on May 25, 1928, and the quantity appearing in a statement "Detail of Plates and Shapes Purchased" dated May 28th, 1928 which was Exhibit 1-A attached to my letter of June 22nd, 1928 and also Exhibit "E" attached to my letter of August 8th, 1928, we beg to state that an analysis of this subject shows that the weights given in Mr. Schulze' report to Mr. Brecht are the estimated weights taken from the schedules prepared in the drafting room whereas the weights contained in Exhibit "E", attached to my letter of August 8, 1928, is the gross invoiced weights of plates and shapes for Job 12 as taken from the records. This gross weight includes plates and shapes ordered for other miscellaneous purposes and which at the time they are ordered are charged into Job 12 and ultimately

directed to Job 12 as they are charged out against specific jobs.

We find that this correction, in the case of Hulls 253-4, amounted to 326,113 lbs. Deducting this from the 15,272,014 lbs. gross weight leaves a remainder of 14,945,901 lbs. as compared with the calculated schedule weight of 14,644,876 lbs. or a difference of 301,025 lbs. or about 2% of the estimated weight. This can be easily accounted for by the mill tolerances.

As a result of the above, the figures for Hulls 253-4 on Exhibit "E" should be modified. Also we find on this same exhibit in rechecking Hulls 244-5 and 268-9 a few discrepancies which we have corrected. These hulls have been also corrected for credits similar to that on Hulls 253-4 for plates and shapes transferred to other accounts.

A revised sheet, exhibit "E", dated October 25, 1928, is heretc attached.

There has been omitted from this sheet, figures for Hulls 1376-1381. The break-down for these Hulls slightly modifies the old Exhibit "E" and new exhibit is attached to my letter of this date which answers your letter of Sept. 25, 1928.

Very truly yours,

Bethlehem Shipbuilding Corporation, Ltd.
H. G. Smith,
Vice President.

REVISED EXHIBIT "E"

BETHLEHEM SHIPBUILDING CORPORATION, LTD.

FORE RIVER PLANT

COMPARATIVE COST OF JOB 12 MATERIALS

Hulls 244-5, Hulls 253-4 and 268-9

244-5

	Weight		Amount
Plates and Shapes	14,785,433#	.0130	$193,115.39
			43,955.33
			$237,070.72

253-4

	Weight		Amount
Plates and Shapes	14,945,901#	.0152	$226,832.19
All other Material			78,919.05
			$305,751.24

268-9

	Weight		Amount
Plates and Shapes	14,764,471#	.0226	$335,087.31
All other Material			62,724.69
			$397,812.00

Quincy, Mass. 8-2-28.
Revised 10-25-28.

EXHIBIT G-160

UNITED STATES SHIPPING BOARD
Emergency Fleet Corporation
Washington

October 2, 1918

To: Mr. Edward N. Hurley
From: Mr. Charles Schwab
Subject: Excessive profits shown by American Shipbuilding Company in recent report.

Last week Mr. Farr sent me a copy of the annual report of his Company showing the profits which they had made during the fiscal year ending June 30, 1918 to be, approximately, 80% net profit on their outstanding common stock after setting aside large sums for war taxes and a moderate amount of depreciation.

I immediately sent for Mr. Farr and demanded that he consent at once to a reduction in price on all of his contracts. He claimed that the large profits were made out of the commandeered ships and that only a few of his direct contract ships had been completed and delivered during the fiscal year covered by the report. I pointed out that this argument had little weight because his contract ships were more expensive to us than the commandeered ships and that his material and labor protections were such that very likely during the coming year his Company would make a great deal more than they did during the past year. His Company has contracts for a total of 176 ships in addition to 32 commandeered ships. The total program exceeds 675,000 tons. If the shipbuilding company were to

make as much per ton as they, apparently, made during the preceding year they would have a net profit of something in excess of $20,000,000 on outstanding common stock issue of about $7,600,000. It is Mr. Farr's expectation that the entire program will be completed before the end of 1919.

The price fixed in the contracts between the American Shipbuilding Company and the Fleet Corporation was agreed to only after extended negotiations and as to the last contract made in May, 1918, the price was fixed after extended conferences not only with Mr. Farr but with all of the other lake shipbuilders and was consented to by me only upon the assurance by all of them that the price was a reasonable one.

Mr. Farr demurred at making any reduction so that, acting on Mr. Cuthell's advice, I told him that we would amend all his contracts so as to limit his Company to what we considered to be "just compensation".

Mr. Farr then agreed that he would execute binding agreements modifying all his contracts so that in no event would his Company make in excess of 10% profit. All Federal taxes are to be paid out of the 10% profit. He likewise agreed that his Company would absorb all the $1,200,000 for plant extension which we approved in May and two-thirds of which we were to have absorbed in the price of the last contract ships.

I think that this readjustment is a fair one and that it will prove an object lesson to any other contractors who think that they can take advantage of us to obtain excessive prices for ships.

I figure that this reduction in price will save in the neighborhood of $12,000,000.

C. M. Schwab,
Director General.

EXHIBIT G-161

Feb. 7, 1918.

Plates and Shapes
For 26 Ships and 6 Tugs
Bethlehem Shipbuilding Corpn. Ltd.

Emergency Fleet Corporation,
United States Shipping Board,
Washington, D. C.

Attention Mr. F. E. Brown, Genl. Purchasing Officer.

Sirs:

Referring to the 21 Tankers, 2 Troop Ships, 3 Freighters and 6 Tugs recently awarded to this Company by yourselves, we beg to advise that we have placed orders with the Bethlehem Steel Company for all of the Plates, Structural Shapes and Bars within their limits of manufacture required for the 14 Vessels and 6 Tugs which will be constructed in our Eastern Yards, as follows:

Hull Plates	35,935 net tons)	At
Structural Shapes	7,484 net tons)	Government
Bars and Flats	357 net tons)	Prices

We will also require for these Hulls to be constructed in our Eastern Yards, in addition to the

above, the following approximate tonnages of Plates and Shapes which the Bethlehem Steel Company cannot manufacture, viz;

Hull Plates	3,685 net tons)	These Plates will be ordered on account existing firm contract reported to you in our letter dated Dec. 13, 1917. At Government Price.
Marine & Flange Steel Boiler Plates	3,565 net tons)	
Structural and Ship Shapes	9,309 net tons)	

For the 12 Tankers to be constructed in our Yards on the Pacific Coast, we will need approximately the following material, which we were advised by Mr. J. L. Replogle, Director of Steel Supply, should be procured from Western Mill in order to minimize transportation, viz;

Hull Plates	31,800 net tons	
Less tonnage to be ordered on account of existing firm contracts reported to you in our letter Dec. 13, 1917	3,200	
Balance to be provided for Western Shipment	28,600 net tons)	
Marine & Flange Steel Boiler Plates	3,000 net tons)	
Structural and ship shapes	16,380 net tons)	At Government Price
Bars and Flats	156 net tons)	

We enclose herewith a statement in detail for your guidance in distributing the tonnages to be supplied by mills other than the Bethlehem Steel Company, and will appreciate your early advices as to allotment decided upon so that specifications can be filed with the mills as soon as the complete data is available.

Yours respectfully,

Bethlehem Shipbuilding Corporation, Ltd.

Purchasing Agent.

BETHLEHEM SHIPBUILDING CORP., LTD.

Bethlehem, Pa.

Plates, Shapes and Bars required for 26 Ships and 6 Tugs for Emergency Fleet Corporation

All Figures Net Tons

	Ordered from Bethlehem Steel Co.							To be ordered from other mills						
To be built	Hull Nos.	Hull Plates	Struct-ural Shapes	Bars & Flats	Hull Plates	Marine Fing. B'lr.	& Steel Plates	Car-negie Tees	Car-negie Channel	Car-negie Bulb Angles	Car-negie H Sections	Car-negie Plain Angles	Phoenix Bulb Angles	Cambria Bulb Angles	Total Shapes Plates
Fore River:	1,376	6,600													
3 tankers	77		1,788	24	675	675	126	1,239							1,365
	78														
Harlan:	3,459														
3 Freighters	60	5,400	1,035		540	540	36	1,194	90	3					1,323
	61														
Harlan:	3,462														
3 Tankers	50	5,775	1,323	24	600	600	60	252	339	45	33	21	462		1,182
	51														
Sparrows Pt	4,190														
2 Troop Ships	81	10,000	2,300	270	1,000	400	40	1,800			200				2,040

Exhibit G-161

1867

To be built		Hull Nos.	Hull Plates	Struct-ural Shapes	Bars & Flats	Hull Plates	Marine Eng. B'lr.	& Steel Plates	Car-negie Tees	Car-negie Channel	Car-negie Bulb Angles	Car-negie H Sections	Car-negie Plain Angles	Phoenix Bulb Angles	Cambria Bulb Angles	Total Shapes Plates
Sparrows Pt:		4,177														
23 Tankers		78	7,200	900	39	750		750	420	1,425	1,200		150			3,195
		79														
Moore:		2,118														
6 Tugs		20	960	438		120		600						204		204
		2,123														
Total for 14 Ships and 6 Tugs—																
Atlantic Coast Yards			35,935	7,484	357	3,685		3,565	682	5,910	1,629	18	303	225	462	9,309
Will be applied against existing firm contract																
Pacific Coast	Union	Hull Nos.				21,800		3,000	1,680	5,700	4,800		4,200			16,380
Guards	Plant	5,257 to														156
	12	5,268														
	Tankers Incl.															
Tons will be applied against existing firm contracts 28,699 to be allotted.																

1868

Exhibit G-161

EXHIBIT G 63

PRICE, WATERHOUSE & CO.
First National Bank Building
San Francisco.

March 1, 1918.

To the President and Directors of the
Union Iron Works Company,
San Francisco, Cal.

Dear Sirs:

In accordance with instructions received we have examined the books and accounts of the Union Iron Works Company for the purpose of determining the amount of Administrative and General Expenses and Property Taxes incurred during the period from December 1, 1915 to December 31, 1917, and in this connection we have prepared and attach hereto (Exhibits "A" and "B") monthly summaries showing the various expenses included under this caption to October 31, 1917.

The amounts shown on these statements under the heading of "Bonuses" represent payments based on percentages of the profits earned before charging Depreciation and Inter-Company Administrative and General Expense. The bonuses and extraordinary expenses were paid to and distributed by Mr. McGregor, to which effect we have received his certificate.

The charge for Inter-Company expense for the month of December 1915 and for the year ending December 31, 1916 has been pro-rated monthly on

the basis of the annual charge made by the Bethlehem Steel Corporation and subsidiary companies for the years 1915 and 1916, while the Inter-Company expense for the ten months ending October 31, 1917 has, we understand, been pro-rated to this Plant on the basis of total Plant pay-roll as calculated at Bethlehem. This latter item is not yet on the books, which at present show charges aggregating $10,687.50 for Inter-Company expense during 1917.

Depreciation of Plant is based on a monthly proportion of the following amounts:

For year ending December 31, 1915	$175,000.00
For year ending December 31, 1916	250,000.00
For year ending December 31, 1917	455,000.00

We may mention that there is included in "Legal Expense" for the month of September 1917 a charge of $10,000.00 for services rendered by Messrs. Robinson, Robinson & Price in connection with construction and Dredging Contracts, etc., at Alameda Plant which might be considered as a Capital Expenditure.

For your information we have also prepared from records on file a summary (Exhibit "C") showing the amounts of (1) Total Plant Direct Labor (including labor charged to shop expense, construction, etc.) and (2) Direct Labor charged to manufacturing —being a part of and included in (1).

On Exhibit "D" will be found a summary showing (1) The actual shop expense incurred, (2) The shop expense charged to jobs by means of a percentage added to the direct labor cost, and (3) The amount by which this latter charge exceeded the actual shop expense. It will be noted that since October, 1917

Office and General Expenses are included with the Shop Expense, but Inter-Company Expenses and Depreciation are not included.

Further particulars in regard to these statements will be gladly furnished upon request.

Yours very truly,

(Signed) Price, Waterhouse & Company

Exhibit G-163

UNION IRON WORKS COMPANY

ADMINISTRATIVE AND GENERAL EXPENSES AND PROPERTY TAXES

FOR THE MONTH OF DECEMBER 1916 AND FOR THE YEAR ENDING DECEMBER 31 1916

	Month of December 1915	Year ending December 31 1916											Total for Year 1916
		January	February	March	April	May	June	July	August	September	October	November	December	
Salaries	$13,004.86	$12,978.76	$13,422.54	$18,787.11	$18,310.93	$16,050.13	$17,573.26	$17,002.72	$17,312.97	$16,981.60	$17,342.77	$18,280.84	$31,304.59*	$213,368.22
Printing & Stationery	506.90	737.67	538.53	2,325.12	1,371.90	1,019.93	1,113.42	816.54	314.68	1,738.34	1,328.80	1,130.81	1,999.85	14,629.49
Office Expense	2,115.45	1,148.34	1,077.14	822.21	2,279.28	729.99	3,780.37	1,825.74	3,333.52	1,437.84	3,491.09	1,974.81	3,531.17	25,320.50
Telephone & Telegraph	786.79	492.44	727.67	417.96	864.56	943.46	870.03	1,005.13	1,322.47	919.81	1,436.57	896.54	1,317.82	11,410.45
Travelling & Entertainment	2,744.22	1,116.53	1,665.63	1,704.62	2,232.79	3,059.97	1,210.92	3,811.53	2,098.54	981.62	1,582.86	6,123.20	5,116.06	31,194.07
Legal Expense	210.59	659.64	2,005.08	309.34	456.33	211.33	239.34	222.03	387.33	3,474.23	333.83	329.46	236.34	8,866.28
Rent	491.67	491.67	491.67	958.33	591.67	691.67	691.67	691.67	691.67	691.67	691.67	691.67	721.67	8,098.66
Insurance	1,011.93	587.60	587.60	1,419.60	1,003.60	1,003.60	1,003.60	1,003.60	1,003.60	1,003.60	1,003.60	582.10	1,399.40	11,401.50
Schemes	600.45	244.93	254.23	80.48	232.47	208.82	256.34	320.74	247.08	379.86	869.77	905.41	9,840.86	14,121.00
Bonuses	58,945.53	7,294.72	7,617.84	8,038.54	8,033.39	9,140.65	22,232.79	14,604.89	21,046.43	12,971.73	16,184.02	22,081.16	79,361.99	226,698.16
Royalties	45.00	4.65	3.65					40.00		70.00				118.30
	$80,483.39	$26,053.16	$28,575.50	$34,863.31	$35,377.91	$33,139.55	$48,971.74	$41,364.59	$47,950.29	$40,980.42	$46,254.78	$52,875.76	$130,929.54	$567,214.63
Advertising	253.93	343.72	228.72	163.72	251.72	45.38	274.10	115.84	353.68	180.60	199.37	115.00	1,072.70	3,344.95
Donations & Subscriptions	725.18	1,642.50	1,262.10	690.20	1,192.11	708.82	3,222.38	891.20	4,365.72	4,145.54	424.49	1,012.54	5,837.35	23,394.95
Extraordinary Expense	9,500.00	13,500.00	4,100.00	8,000.00	5,660.00	5,500.00	7,500.00	6,250.00	3,000.00	3,000.00	4,565.00	9,500.00	5,000.00	77,575.00
	$90,942.50	$41,539.38	$34,166.40	$43,717.23	$42,481.74	$39,393.75	$59,968.22	$50,621.63	$55,677.89	$48,176.76	$51,443.64	$63,503.30	$140,839.59	$671,529.53
Real Estate & Property Taxes	2,361.76	2,361.76	2,361.76	2,361.76	2,361.76	2,361.76	2,361.77	2,749.72	2,749.72	2,749.72	2,749.72	2,749.72	2,749.72	30,668.89
Inter-Company Expense	8,280.00	5,041.66	5,041.66	5,041.66	5,041.66	5,041.67	5,041.67	5,041.67	5,041.67	5,041.67	5,041.67	5,041.67	5,041.67	60,500.00
Depreciation	14,583.33	20,833.33	20,833.33	20,833.34	20,833.33	20,833.33	20,833.34	20,833.33	20,833.33	20,833.34	20,833.33	20,833.33	20,833.34	250,000.00
	$115,187.59	$69,776.13	$62,403.15	$71,953.99	$70,718.49	$67,630.51	$88,205.00	$79,246.35	$84,302.61	$76,801.49	$80,068.36	$92,128.02	$169,464.32	$1,012,698.42

* Includes $14,219.48 Christmas Bonus to Office and other Employees

Exhibit G-163

UNION IRON WORKS COMPANY

ADMINISTRATIVE AND GENERAL EXPENSES AND PROPERTY TAXES

FOR THE TEN MONTHS ENDING OCTOBER 31 1917

	January	February	March	April	May	June	July	August	September	October	Total for Ten Months
Salaries	$19,381.27	$18,657.76	$15,291.00	$17,055.57	$17,199.40	$17,968.67	$17,842.65	$21,113.59	$19,484.25	$ 8,357.50	$172,351.66
Printing & Stationery	2,108.31	1,320.06	1,043.54	2,001.54	1,416.20	1,307.27	1,334.02	1,429.35	2,651.98	44.05	14,656.52
Office Expense	1,837.84	2,933.01	1,314.78	3,864.12	1,049.56	954.31	1,555.76	1,792.06	2,841.66	293.06	18,376.68
Telephone & Telegraph	668.68	950.87	1,119.49	1,446.28	1,152.82	1,206.84	795.02	1,977.99	1,345.04	375.96	11,038.99
Travelling & Entertainment	2,132.36	1,843.09	1,280.12	3,029.05	6,701.08	813.05	2,301.55	4,877.03	813.46	5,470.08	34,260.85
Legal Expense	208.33	273.33	1,641.52	1,045.55	1,253.01	1,093.34	361.18	223.33	11,284.09		17,351.68
Rent	721.67	721.67	721.67	721.67	721.67	751.67	951.67	1,151.67	951.67	342.00	7,757.03
Insurance	896.88	896.88	896.88	896.88	896.88	896.88	896.88	896.88	896.88	896.88	8,968.80
Schemes	349.77	11,416.88	139.27	349.53	157.23	185.91	246.10	217.10	146.52		13,207.31
Bonuses	12,043.31	7,793.23	26,948.35	6,839.07	32,490.61	22,698.90	20,954.73	45,248.85	17,819.13	14,003.74	206,749.90
Royalties								3,100.00			3,100.00
	$40,348.42	$46,806.78	$50,396.62	$37,186.26	$63,033.48	$47,787.54	$52,239.56	$82,027.83	$58,235.68	$29,783.25	$507,849.42
Advertising	1,147.50	140.50	147.50	205.00	140.50	229.00	215.00	211.50	435.50	352.50	3,224.50
Donations & Subscriptions	1,100.77	952.37	1,495.93	750.33	5,734.23	12,662.69	1,592.32	819.96	3,387.63	50.92	28,547.15
Extraordinary Expense	3,000.00	9,900.00	5,000.00	10,000.00	5,000.00	7,000.00		7,000.00	10,000.00	6,500.00	63,400.00
	$45,596.69	$57,799.65	$57,040.05	$48,141.59	$73,913.21	$67,679.23	$54,046.88	$90,059.29	$72,057.81	$36,686.67	$603,021.07
Real Estate & Property Taxes	2,749.72	2,749.72	2,749.72	2,749.71	2,749.71	2,749.71	3,696.22	3,696.22	3,696.22	3,696.21	31,283.16
Inter-Company Expense	11,594.98	13,307.78	21,051.20	9,248.53	23,216.15	8,930.31	22,053.45	15,072.92	7,217.89	14,732.89	146,426.10
	37,916.67	37,916.67	37,916.67	37,916.67	37,916.67	37,916.67	37,916.67	37,916.67	37,916.67	37,916.67	379,166.70
	$97,858.06	$111,773.82	$118,757.64	$98,056.50	$137,795.74	$117,275.92	$117,713.22	$146,745.10	$120,888.59	$93,032.44	$1,159,897.03

EXHIBIT "C"

UNION IRON WORKS COMPANY

Summary of Direct Labor Charges before adding percentage to cover Shop Expense

		Total Plant Direct Labor	Direct Labor charged to Manufacturing
1915	December	$ 287,148.58	$ 252,387.10
1916	January	$ 258,529.09	$ 228,086.40
	February	300,599.34	266,530.61
	March	388,294.73	350,876.33
	April	499,448.83	451,654.54
	May	383,117.46	341,062.53
	June	452,491.31	409,199.94
	July	591,770.15	526,195.77
	August	515,575.76	457,710.20
	September	504,734.09	451,936.77
	October	673,186.63	594,535.85
	November	589,546.27	525,161.70
	December	718,610.79	642,509.86
		$5,875,904.45	$5,245,370.50
1917	January	$ 602,634.79	$ 547,124.84
	February	593,477.39	538,158.58
	March	663,540.56	616,855.97
	April	854,715.80	791,691.06
	May	683,606.59	630,902.56
	June	682,343.20	636,695.52

	Total Plant Direct Labor	Direct Labor charged to Manufacturing
July	886,380.45	824,921.77
August	976,374.49	908,650.83
September	335,562.57	312,375.49
October	891,618.79	844,680.74
	$7,170,254.63	$6,652,057.36

EXHIBIT "D"

UNION IRON WORKS COMPANY
Bethlehem Shipbuilding Corporation, Limited
(Union Plant)

Summary of Overhead Expense

1915	Expenses	Amount added to Direct Labor	Amount over or under charged
December	$ 84,234.68	$ 94,708.31	$ 10,473.63
1916			
January	$ 76,172.29	$ 89,270.62	$ 13,098.33
February	77,875.97	97,203.39	19,327.42
March	77,310.85	110,494.19	33,183.34
April	108,203.09	127,194.83	18,991.74
May	81,089.79	96,074.00	14,984.21
June	95,646.51	130,505.47	34,858.96

	Expenses	Amount added to Direct Labor	Amount over or under charged
July	119,034.51	161,569.73	42,535.22
August	113,800.95	128,217.88	14,416.93
September	117,296.46	124,331.19	7,034.73
October	137,624.23	179,370.80	41,746.57
November	115,116.41	147,375.18	32,258.77
December	144,239.05	160,538.66	16,299.61
	$1,263,410.11	$1,552,145.94	$ 288,735.83
1917			
January	$ 126,311.71	$ 136,660.48	$ 10,348.77
February	122,697.71	149,219.92	26,522.21
March	127,112.34	144,554.73	17,442.39
April	170,025.44	196,166.66	26,141.22
May	139,290.66	154,382.95	15,092.29
June	162,091.18	150,725.87	11,365.31 (Red)
July	190,222.95	213,743.12	23,520.17
August	204,406.06	230,164.18	25,758.12
September	106,727.76	83,611.03	23,116.73 (Red)
*October	256,892.20	246,628.74	10,263.46 (Red)
*November	332,442.49	351,120.45	18,677.96
*December	650,329.92	389,789.76	260,540.16 (Red)
	$2,588,550.42	$2,446,767.89	$1,141,782.53 (Red)

*Includes Shop Expenses, also Office and General Expenses and Bonuses but not including Depreciation.

EXHIBIT G-170

Law Offices of
EVANS, BAYARD & FRICK
1335-43 Land Title Bldg.,
Philadelphia.

May twenty-second, 1929.

Bethlehem v. Shipping Board

Dear Mr. Brown:

Responsive to your subpoena I hand you the following data:

1. Statement of actual cost of labor, material and operating expenses separated by jobs for Hulls Nos. 129, 130, 132, to 139, inclusive, 140 to 149, inclusive, 154, 162 to 169 inclusive, at Union; Hulls Nos. 251 to 255, inclusive, 264, 265, 267, 268, 269, 272, 273, 297, 298 at Fore River; Hulls Nos. 115 to 117, inclusive at Moore; 158, 159, 163, 164, 167, 169, 170, 172, 173, 174, 175 at Sparrows Point; 441-442, 445, 446, 447, 448, 449, 453, to 459, inclusive at Harlan.

The above information is submitted to you in the form of summaries and with the exception of hulls Nos. 129 and 130 and 132, 133, 136 to 139 at Union we have the original sheets here from which the figures were taken, and if you desire to, we will be glad to submit them to you for verification. In the

case of Union hulls Nos. 129 and 130 I understand the original account is in a bound volume with the accounts of other hulls with which you are not concerned, and this was not forwarded presumably because of the bulk.

In the case of Hulls Nos. 132, 133, 136 to 139 I am informed that the original ledgers have been lost and the information which is furnished herewith has been compiled from reports previously furnished by the plant.

2. State of administration, selling and general expenses and depreciation for each plant for the years 1916, 1917 and 1918.

3. Estimates as follows: Hulls Nos. 253, 254, 251 Fore River; Nos. 441, 442, 446, 448, 453, 454, 455, 456, 457, 458 at Harlan. I expect to receive in tomorrow's mail, and will let you have, some additional estimates for Fore River. We have not been able to locate any estimates for any of the hulls specified at any of the other yards.

4. Comparative statements of estimated cost and actual cost on Hulls Nos. 251, 253, 254, 255, 264, 265, 267 and 268 and 269 at Fore River. These are the only records of this kind which we have been able to locate at any of the plants.

I understand that the particular sheets which we have been able to locate and which are furnished herewith do not necessarily give the completed returned costs.

As some of these papers are original records of the Company, I will ask you to be sure to see to it that they are returned to me in due course. The sum-

maries of cost which have been compiled you may retain.

Yours very truly,

Ralph B. Evans

Joseph J. Brown, Esq.,
1535 Land Title Building,
Philadelphia, Pa.

FORE RIVER SHIPBUILDING CORPORATION

Admin., Selling & Gen'l Expense

Year	*Month*	*Direct*	*Inter-Company*	*Depreciation*
1916	January	$13,484.26		
	February	14,447.76		
	March	29,768.12	$84,750.00	
	April	18,475.68		
	May	21,273.19		
	June	31,723.95	84,750.00	
	July	26,319.57		
	August	50,376.00		
	September	20,123.00	94,750.00	
	October	15,583.76		
	November	12,023.06		
	December	32,125.18	94,750.00	$250,000.00
	Total	285,723.53	$359,000.00	$250,000.00
1917	January	14,306.11		
	February	19,853.31		
	March	14,584.65		
	April	16,350.03	31,500.00	
	May	22,173.91		
	June	18,761.20	31,500.00	
	July	21,469.96		

Year	*Month*	*Direct*	*Inter-Company*	*Depreciation*
	August	16,474.53		
	September	29,848.45	31,500.00	
	October	25,331.08		
	Bethlehem Shipbuilding Corp.—Fore River			
	November	27,510.83		
	December	37,326.51		
	Total	$263,990.57	$94,500.00	$200,000.00
1918	January	$43,259.09		
	February	40,942.92		
	March	83,864.29		
	April	62,263.57		
	May	66,530.28		
	June	92,961.75		
	July	73,244.87		
	August	85,854.59		
	September	107,970.30		
	October	124,533.37		
	November	153,920.19		
	December	176,490.72		
	Total	$1,111,835.94		$341,000.00

5-17-29

SAMUEL L. MOORE & SONS CORPORATION

Admin. Selling & Gen'l Expense

1916	January	$6,121.42
	February	4,471.80
	March	4,632.02
	April	6,163.99
	May	5,410.89
	June	5,877.45

Year	*Month*	*Direct*	*Inter-Company*	*Depreciation*
	July	8,678.60		
	August	7,242.37		
	September	6,952.41		
	October	6,669.53		
	November	5,841.50		
	December	6,617.23		
	Total	$74,679.21		$70,000.00
1917	January	$5,635.01		
	February	6,711.26		
	March	7,497.61		
	April	6,927.03		
	May	7,224.18		
	June	6,694.79		
	July	8,243.29		
	August	8,043.07		
	September	6,045.86		
	October	5,926.42		
	Bethlehem Shipbuilding Corp.—Moore Plant			
	November	5,084.92		
	December	12,106.44		$55,000.00
	Total	$86,139.88		$65,300.00
1918	January	$2,380.48		
	February	6,210.55		
	March	4,970.65		
	April	7,132.31		
	May	8,043.66		
	June	7,241.58		
	July	6,938.69		
	August	5,834.84		
	September	10,791.19		
	October	16,847.80		

Year	*Month*	*Direct*	*Inter-Company Depreciation*	
	November	38,063.21		
	December	17,976.38		
	Total	$132,431.38		$85,000.00

5-17-29

HARLAN & HOLLINGSWORTH SHIPBUILDING CORPORATION

Admin. Selling & Gen'l Expense

1916	January	$9,921.79		
	February	9,015.99		
	March	10,987.54	$375.00	
	April	10,295.42	375.00	
	May	6,609.56	375.00	
	June	6,767.56	750.00	
	July	6,823.46	750.00	
	August	6,864.30	750.00	
	September	6,864.30	1,750.00	
	October	7,278.19	1,750.00	
	November	8,899.23	1,750.00	
	December	7,303.38	2,750.00	
	Total	$97,405.88	$11,375.00	$160,000.00
1917	January	$6,310.07		
	February	7,510.28		
	March	7,604.52	187.50	
	April	7,894.43		
	May	6,544.12		
	June	8,012.46	187.50	
	July	6,722.91		
	August	6,234.72		

Year	*Month*	*Direct*	*Inter-Company*	*Depreciation*
	September	6,044.50	187.50	
	October	6,092.23		
	Bethlehem Shipbuilding Corp.—Harlan Plant			
	November	$3,065.41		
	December	13,678.72		
	Total	$85,713.37	$562.50	$177,500.00
1918	January	$5,884.12		
	February	11,332.37		
	March	7,686.73		
	April	18,601.31		
	May	15,989.46		
	June	24,071.21		
	July	14,922.33		
	August	21,486.67		
	September	26,250.16		
	October	61,983.07		
	November	61,070.23		
	December	31,599.34		
	Total	$300,877.40		$192,000.00

5-17-29

BETHLEHEM STEEL COMPANY

SPARROW'S POINT SHIPBUILDING PLANT

Admin., Selling & Gen'l Expense

1916	July	$23,055.78	
	August	18,857.68	
	September	16,118.47	
	October	26,478.55	
	November	19,205.72	
	December	32,614.61	
	Total (Mos.)	$136,330.81	$150,000.00

Year	*Month*	*Direct*	*Inter-Company. Depreciation*
1917	January	$8,739.42	
	February	14,458.73	
	March	18,573.65	
	April	23,302.23	
	May	6,633.79	
	June	14,425.85	
	July	13,734.93	
	August	17,378.04	
	September	20,558.07	
Bethlehem Shipbuilding Corp.—Sparrow's Point Plant			
	October		
	November	11,618.86	
	December	36,803.09	
	Total	$186,226.66	$234,943.34
1918	January	$7,312.19	
	February	15,778.45	
	March	9,926.82	
	April	21,665.95	
	May	58,409.33	
	June	67,925.90	
	July	46,763.36	
	August	22,543.41	
	September	31,019.41	
	October	63,832.81	
	November	82,863.40	
	December	87,892.86	
	Total	$515,933.89	$335,000.00

5-17-20

UNION IRON WORKS COMPANY

Admin., Selling & Gen'l Expense

Year	*Month*	*Direct*	*Inter-Company*	*Depreciation*
1916	January	$42,039.38		
	February	34,666.40		
	March	44,217.23	$8,250.00	
	April	42,981.74		
	May	39,893.75		
	June	60,468.22	8,250.00	
	July	51,121.63		
	August	56,177.89		
	September	48,676.76	22,000.00	
	October	51,943.64	5,068.45	
	November	63,747.60		
	December	140,839.59	16,931.55	
	Total	$676,773.83	$60,500.00	$250,000.00
1917	January	45,596.69		
	February	57,799.65		
	March	57,040.05		
	April	48,141.59	3,562.50	
	May	73,913.21	3,562.50	
	June	67,679.23	7,125.00	
	July	54,046.88	7,125.00	
	August	90,059.29		
	September	66,813.51	24,208.89	
	October	36,686.67		
Bethlehem Shipbuilding Corp.—Potrero & A La Meda Works				
	November	38,407.26		
	December	29,513.31		
	Total	$855,697.34	$45,583.89	$325,000.00

Year	*Month*	*Direct*	*Inter-Company*	*Depreciation*
1918	January	$44,083.48		
	February	96,200.59		
	March	83,552.12		
	April	85,473.61		
	May	106,088.58		
	June	122,925.29		
	July	110,949.02		
	August	99,641.81		
	September	123,414.76		
	October	175,222.95		
	November	150,859.06		
	December	436,268.63		
	Total	$1,635,279.90		$462,000.00

5-17-29

UNION IRON WORKS DRY DOCK COMPANY

Admin., Selling & Gen'l Expense

1916	January	$ .47	
	February	11.50	
	March	48.38	
	April	79.42	
	May	17.36	
	June	11.27	
	July	32.16	
	August	55.41	
	September	53.54	
	October	195.56	
	November	32.48	
	December	22.71	
	Total	$560.26	$60,000.00

Exhibit G-170

Year	Month	Direct	Inter-Company Depreciation
1917	January	18.61	
	February	73.64	
	March	138.35	
	April	67.91	
	May	35.93	
	June	6.38	
	July	31.85	
	August	13.16	
	September	74.18	
	October	172.61	
	Bethlehem Shipbuilding Corp.—Hunters Point		
	November	3,015.89	
	December	2,195.63	
	Total	$5,831.38	$50,000.00
1918	January	783.51	
	February	735.68	
	March	786.43	
	April	2,360.79	
	May	5,351.76	
	June	7,230.97	
	July	3,870.71	
	August	4,466.05	
	September	353.44	
	October	2,078.06	
	November	30,613.30	
	December	14,066.24	
	Total	$72,696.94	$75,000.00

EXHIBIT G-175

September 7th, 1928.

Ralph B. Evans, Esq.,
1335 Land Title Building,
Philadelphia, Penna.

Re: U. S.-Bethlehem Litigation

Dear Mr. Evans:

The statement given to us by Mr. Brown in the above matter recites that the delivered cost of steel plates for Hull 253 was $1.35 base per hundred pounds.

In Exhibit "E" which accompanied Mr. Smith's letter to Mr. Robison of August 8th, 1928, it appears that the average cost of plates and shapes for Hull 253 was $1.51 per hundredweight. A similar price appears in Exhibit "A-1" accompanying Mr. Smith's letter to Mr. Robison dated June 22nd, 1928.

We would like to have an explanation of this apparent discrepancy as soon as possible if you consider it proper to furnish the same.

We would also like to have a breakdown of the weights and prices referred to in Exhibit "E" into plates and shapes with respect to Hulls 253 and 254, as the figures furnished by Mr. Schulze in his letter to Mr. Brecht under date of May 25th, 1928 are apparently inaccurate and the invoices which have been submitted to us for examination are not complete.

Very truly yours,

J. J. Brown.

EXHIBIT G-176

Land Title Building
Philadelphia, Pa.

September 21, 1928.

Ralph B. Evans, Esquire,
Land Title Building,
Philadelphia, Penna.

Bethlehem Litigation

Dear Sir:

In the information furnished by you on August 8th and June 22d, 1928, in referring to Job 12, the breakdown is shown of "Plates and Shapes" and "All Other Material". In the invoices which have been submitted to you, relating to Hulls 253-254, there is a Binder, "Exhibit C", which bears the heading "Purchased Material, Plates, Shapes, Castings". There are a few invoices covering forgings and castings, totaling approximately $12,000. Information is requested as to whether or not these forgings and castings are included in all of your data as "Plates and Shapes" or whether they are included in "All Other Material".

Information is also desired as to the major items comprising the "Other Material" included in Job 12, and whether this "Other Material" includes bars, rivets or rivet-rounds, stern frames, stern tubes, stems, rudder posts and arms, bolts and deck stanchions.

If any of the above enumerated items are not included in the "Other Material", information is

desired as to whether they are included in "Plates and Shapes".

Information is also desired as to whether the Fore River plant purchased their rivets or manufactured them at the time Hulls 253-254 were constructed and at the time when Mr. Brown made his estimate. There are no invoices included in those sent to you covering bars, rivets, or rivet rounds.

In the information furnished by you on August 8, 1928, the total weight of plates and shapes charged to Hulls 253-254 was given as 15,272,014 pounds. The information furnished by you on June 22, 1928, contains a communication from Mr. Schulze giving the total gross weight for each Hull, 253 and 254, of plates and shapes on Job 12, or its equivalent, as 7,322,438 pounds, divided between plates and shapes, as follows:

	One Hull	*Two Hulls*
Plates	5,198,420 lbs.	10,396,840 lbs.
Shapes	2,124,018 lbs.	4,248,036 lbs.
Total	7,322,438 lbs.	14,644,876 lbs.

These figures disclose a deficiency of 627,138 pounds under the figures of August 8th. A summary of the invoices discloses that there are invoices for 10,005,075 pounds of plates and 2,699,586 pounds of shapes, or a total of 12,704,661 pounds for Hulls 253-254. It would appear, therefore, that there are no invoices covering approximately 2,500,000 pounds, if the figures submitted by you on August

8th are the correct figures. There are nearly 2,000,000 pounds short, if the figures submitted by Mr. Schulze are correct. Information is desired as to which of the two figures are to be taken as the correct requirements for Hulls 253-254.

Information is also desired as to what comprises the bulk of the deficiency disclosed by the invoices. Do these deficiencies represent mainly shapes and, if so, what was the character of the shapes and what unit prices were charged against Hulls 253-254, and what was the freight charged against these hulls for the items. If the deficiencies represent plates, what were the unit prices and freights paid for the same.

It is requested that the total number of pounds of each of plates, shapes, bars and rivets charged to Hulls 253-254, 244, 245, 268-269 and the Hulls covered by Contracts 183 and 299 be given and the base unit price of the plates, shapes, bars and rivets purchased for the above hulls be given. It is also requested that the unit freight paid on these materials and charged to the different hulls be given. It is requested that the information asked as to the hulls covered by Contracts 183 and 299 be segregated by contract, if possible.

It is also requested that the amounts, including unit prices and freight, paid for each of the major items included in material other than shapes and plates in Job 12 be given us for the hulls and contracts mentioned above.

It is also requested that we be given as far as possible a list of the items, with their prices, considered by Mr. Brown in arriving at his factor of

increase for material other than that covered by Job 12.

Very truly yours,

Ralph H. Hallett.

EXHIBIT G-177

September 25, 1928.

U. S. v. Bethlehem Shipbuilding Corporation, Ltd.

Dear Mr. Evans:

The following is in reply to inquiries and requests for additional information contained in letters from Mr. Joseph J. Brown to you dated September 7, 1928 and September 21, 1928, copies of which you sent me on the same dates.

1. Inquiry in letter of September 7, 1928, as to why the average cost of plates and shapes, given as $1.51 in Exhibit E. accompanying Mr. Smith's letter of August 8, 1928, and in Exhibit A-1 accompanying his letter of June 22, 1928, does not conform to the delivered base price of $1.35 for plates mentioned in the description of the graph.

Extras added to the base price of plates and the price of shapes, with the extras thereon, account for the greater part of this difference. Variations in delivered price, depending on whether the steel was consigned to Boston or to Fore River would also account for a small part of it.

2. Request in letter of September 7, 1928, for breakdown of weights and prices referred to in Ex-

hibit E into plates and shapes with respect to Hulls 253 and 254.

This could only be done from the invoices which have been furnished. As a part of the Carnegie Steel Company invoices are missing (see 6 below) there is no way in which an exact breakdown can be made but from the Carnegie Steel Company invoices of which photostatic copies have been furnished and the Bethlehem Steel Company invoices for Hulls 253 and 254, which were sent to you on August 8, 1928, it should be possible for Mr. Brown's assistants to make a breakdown which will be approximately correct.

3. Inquiry in letter of September 21, 1928, whether forgings and castings are included in "plates and shapes" or in "all other material."

Forgings and castings are included in "all other material."

4. Inquiry in letter of September 21, 1928, as to major items comprising "other material included in Job 12."

"Other material in Job 12" includes all materials charged to that job other than plates and shapes. The nature of such other materials can readily be derived from the schedule of items included in Job 12, which was Exhibit A accompanying Mr. Smith's letter of August 8, 1928. They include bars (if any), rivets, stern frame, stern tube, stem, rudder posts and arms, bolts and deck stanchions, which are the items specifically mentioned in this inquiry.

5. Inquiry whether rivets were purchased or manufactured at the Fore River plant.

Rivets were purchased both for Hulls 253 and 254 and when Mr. Harry Brown made his graph of probable cost.

6. Inquiry whether total weight of plates and shapes for Hulls 253 and 254 as furnished on August 8, 1928 (15,272,014 lbs.) or that appearing in a communication from H. H. Schulze to H. A. Brecht, accompanying Mr. Smith's letter of June 22, 1928, is to be taken as showing the requirements of plates and shapes for these hulls, and as to the nature of the materials covered by missing invoices.

Mr. Schulze's figures were, as his communication indicates, based on estimates of the material required, furnished by the Hull Drawing Room. The more recent figure (15,272,014) was taken from records of plates and shapes actually purchased for or charged to the ships and shows approximately the weight of plates and shapes entering into the cost. Invoices have heretofore been furnished covering plates and shapes for Hull 253 amounting to 7,101,648 lbs. and for Hull 254 amounting to 7,096,301 lbs. or 14,197,949 lbs. for both. The figure mentioned in Mr. J. J. Brown's letter of September 21, 1928, of 12,704,661 lbs. as the amount covered by the invoices is apparently incorrect. Examination of accounts payable records in connection with these hulls shows that Carnegie Steel Company invoices are missing covering, for Hull 253, 537,037 lbs. of shapes and/or plates amounting to $7,253.92, and for Hull 254, 537,036 lbs. of shapes and/or plates amounting to $7,253.91. As has been said above, we are advised that there is no way of telling how much of these latter amounts represent shapes and how much plates.

7. Inquiry as to total number of lbs. each of plates, shapes, bars and rivets charged to Hulls 253-254, 244-245, 268-269 and hulls covered by Contracts 183 and 299, with base unit prices of each and unit freight paid thereon;

Also,

inquiry as to amounts, unit prices and freight paid for each of the major items included in material other than plates and shapes in Job 12 for the same hulls.

What we have said above covers these inquiries so far as plates and shapes for Hulls 253 and 254 are concerned. As to plates and shapes for Hulls 244-245 and 268-269, the data requested can be derived only from the invoices which were sent to you on August 8, 1928. The same is true regarding castings and forgings in Job 12 for all these hulls. Whether the information requested can be furnished in respect of bars and rivets and of any other major items in Job 12 other than plates and shapes for all the hulls mentioned, and also in respect of plates, shapes, castings and forgings for the hulls under Contracts 183 and 299, we are not now advised. We have sent an inquiry regarding this to our clients and will reply further regarding it on receiving definite information from them.

8. Request for list of items, with their prices, considered by Mr. Brown in arriving at his factor of increase for material other than that covered by Job 12.

No record of such items and prices has been preserved.

I am sending you an additional copy of this letter so that you may furnish it to Mr. Brown.

Very truly yours,

W. W. Robison.

Ralph B. Evans, Esq.,
Land Title Building,
Philadelphia, Pa.

EXHIBIT G-178

(Copy)
Bethlehem Pa.

April 19, 1918.

United States Shipping Board,
Emergency Fleet Corporation,
Washington, D. C.
Attention: Mr. Charles Piez
Vice-President and General Manager

Gentlemen:

Referring to the letter from the United States Shipping Board, Emergency Fleet Corporation, dated January 5, 1918 relative to additional tonnage to be constructed at the various plants of the Bethlehem Shipbuilding Corporation, Ltd., and to our letter of December 19, 1917 and to our letter of December 13, 1917—all in relation to the above subject:

We beg to invite attention to the following paragraph of our letter of December 13, 1917, herewith quoted:

"This Company has contracts with the Midvale Steel & Ordnance Company, dated March 29, 1917, and the Central Iron & Steel Company dated March 19, 1917, for a total of 6850 tons of steel plates and marine boiler steel, less than 500 tons of which is marine boiler steel, at six cents (6¢) per pound for the steel plates and fifteen cents (15¢) per pound for the boiler steel, which are firm contracts, and which steel it is obligated to take for use in Merchant Vessels. Since the entry of the Emergency Fleet Corporation into the field of ship purchases and since its commandeering order forbidding the sale of ships to any other parties, this Company's proposal is based on the understanding that it will be allowed to use this amount of steel in its various vessels at the prices covered by its contracts, namely six cents (6¢) for steel plates and fifteen cents (15¢) per pound for boiler steel."

At conferences between a representative of our Company and Mr. Radford of the United States Shipping Board, Emergency Fleet Corporation, it was agreed that the steel for which we had definite contracts with the Midvale Steel & Ordnance Company and the Central Iron & Steel Company will be utilized in the construction of the vessels, ordered by the Fleet Corporation in its letter of January 5, 1918 herein referred to. The increased cost involved over and above the Government prices to be distributed amongst the vessels at the various plants in proportion to the amount of tonnage required for the contracts at each plant and since nothing in the contracts covers the prices which we are to pay for steel, and since it was agreed the steel for which we had contracts would be utilized,

we respectfully request that instructions be issued to the departments of the United States Shipping Board, Emergency Fleet Corporation covering this item, in order to avoid any confusion between the Shipping Board representatives and our representatives at the various plants.

Yours very truly,

Bethlehem Shipbuilding Corporation, Ltd.

(Signed) H. Brown,
Technical Manager.

EXHIBIT G-207

Letterhead of
CRAVATH, DE GERSDORFF, SWAINE & WOOD

June 30, 1928

U. S. v. Bethlehem Shipbuilding Corporation, Ltd.

Dear Mr. Evans:

Supplementing Mr. Wood's letter to you of the 28th instant, I send you herewith, in duplicate, one copy for your files and one to be furnished to counsel for the Shipping Board, further papers in response to Mr. Brown's various requests for additional information, as follows:

Letter by E. W. Geiss to this firm, dated June 19, 1928,* giving information with respect to Hull No. 440 similar to that shown for other ships in the statement previously furnished entitled "General Characteristics, etc.".

Letter from H. G. Smith, Vice-President, to me, dated June 22, 1928,** with enclosure, giv-

ing the light weight of various vessels as taken from "Curve of Form" or "Dead Weight and Capacity Scale" plans.

Letter from H. G. Smith to me dated June 30, 1928,*** supplementing his letter of June 22, copies of which accompanied Mr. Wood's recent letters to you, and enclosing information with respect to the Harlan plant similar to that which accompanied the letter of June 22.

Very truly yours,

W. W. Robison

Ralph B. Evans, Esq.,
Land Title Building,
Philadelphia, Pa.

21
Encls.

* See Exhibit G-31 of this record.
** See Exhibit G-39 of this record.
***See Exhibits G-27 to G-30, inclusive, of this record.

EXHIBIT G-208

UNITED STATES SHIPPING BOARD
Emergency Fleet Corporation
Phila., Pa.

September 25, 1918.

Bethlehem Shipbuilding Corporation, Ltd.,
Bethlehem, Pa.

Attention Mr. Powell

Gentlemen:

Re: Estimated basis price on Troop Transports at Sparrows Point Plant and Liberty Shipyard.

The division of steel ship construction has concluded its work of estimating the cost of the troop transports. Its figures are as follows:

Sparrows Point Transports—	$3,950,000
Liberty Yard Transports—	4,100,000

Mr. Cox and myself have been asked by Mr. Piez, to discuss this matter with you so that an estimated basis cost, which will be mutually satisfactory, may be inserted in our contracts.

Very truly yours,

Chester W. Cuthell,
General Counsel.

EXHIBIT G-209

September 26, 1918.

Mr. Chester W. Cuthell,
General Counsel,
United States Shipping Board,
Emergency Fleet Corporation,
Phila., Pa.

Dear Sir:

Answering your letter of the 25th inst., on the subject of base price for Troop Transports building at Sparrows Point and Liberty Plant, this matter was discussed with the Division of Steel Ship Construction and the General Counsel this morning, and it is understood that in view of the facts presented at this conference, the base prices submitted

by this Company are accepted by the Fleet Corporation.

It is requested that this understanding be confirmed in writing.

Yours very truly,

J. W. Powell,
Vice President.

EXHIBIT B-6

October 9, 1918.

From: Chas. M. Piez, Vice Pres. & Gen. Manager.

To: Board of Trustees.

Subject: Bethlehem Shipbuilding Corporation Ltd. Contract for six troop ships to be built at Sparrow's Point.

This contract has been executed by both parties and is awaiting formal approval by the Board.

The reason the contract was let to the Sparrows Point plant of the Bethlehem Shipbuilding Corporation is that, that plant is one of the few in our country properly equipped and organized to construct the intricate troop ships.

This decision was reached after a very careful study of the capabilities of our shipyards, the contracts then in existence with them and the possibility of getting the troop ships in time to make them most useful.

Similar contract was made with the New York Shipbuilding Corporation after the same sort of investigation, and with Bethlehem Shipbuilding Corporation, Ltd., at Alameda.

The troop ship is of a new design and the cost thereof is a matter only of estimate. There is no precedent to guide us. Not any of the contractors would agree to build the ships on a lump sum basis. It was therefore necessary for us to place the contract on a cost and fee basis. The preliminary estimates showed that the ships would probably cost $4,160,000 each. We negotiated with the contractor and procured his consent to a fee of $320,000 per ship which is approximately 7½% of what we thought the ship would cost, but we wish to have some incentive on the contractor's part to holding the cost down. The best device that we have found for that purpose, is to fix an estimated basis cost satisfactory to ourselves and give the contractor a share in savings, if the actual cost be less than the estimated basis cost.

In fixing these estimated basis costs, care must be exercised that they be not placed at too low a figure, for if they are, the probabilities are that the contractor will lose interest in keeping the cost down as soon as it finds that the ship will cost more than the estimated basis cost.

We discussed this matter with the Board at the time the commitments were made last Spring and showed how we intended to fix the basis cost. At the suggestion of the Board, our method of fixing the basis cost was not kept on the record, the Board fearing that such a record might be an embarrassing precedent.

In the contracts now awaiting approval, the basis cost is stated at $4,160,000, which is Bethlehem's estimate; and there is a provision that the basis cost might be revised after we had had an opportunity of making a fuller investigation.

There is submitted herewith, a memorandum dated October 2nd, from the Manager of the Division of Steel Ship Construction showing in outline how their investigation was made. To that memorandum there is attached a detailed estimate submitted by the shipbuilder for similar ships to be built at Alameda. The total estimated cost of those ships is stated to be $4,464,100. Mr. Cox estimates that the proper *bare cost* of the Sparrow's Point ship should be $3,950,000. Based on this bare cost, if we were to follow out our plan for fixing the estimated base cost to be inserted in the contracts, the said estimated basis cost would be $4,443,500. This is considerably in excess of the shipbuilder's estimated basis cost, and we therefore desire the contract as submitted to be approved.

These figures mean that if the ships are constructed for the bare cost as shown by our own figures and those of Newport News Shipbuilding and Dry Dock Company the contractor will receive in addition to its $320,000 fee, one-half of the difference between $3,950,000 and $4,160,000, to wit, $210,000 or a total of $425,000.

There was no separate estimate made of the Sparrows Point Ships because they are identical with the Alameda ships.

The fee paid in the Alameda contract is $300,000 instead of $320,000 for the Sparrows Point ships,

because we are supplying all of the funds necessary to build the former yard. We believe that the contractor is entitled to a higher fee where it is supplying its own yard and equipment.

Charles Piez,

Vice President & General Manager.

CWC:S

Approved by:

Chester W. Cuthell,
General Counsel.

EXHIBIT B-7

Proceedings of the Board of Trustees of United States Shipping Board Emergency Fleet Corporation at a Meeting of Said Board on May 2, 1918.

On motion of Mr. Donald, seconded by Mr. Page and duly carried, it was ordered that the following be incorporated in the minutes of this date:

April 30, 1918.

To the President and Trustees of the United States Shipping Board Emergency Fleet Corporation.

Dear Sirs:

The United States Shipping Board Emergency Fleet Corporation, of which I have been appointed Director General, has, or may in the future have, contracts or other business relations not only with the Bethlehem Steel Corporation, of which I am an officer, director, and stockholder, but also with cer-

tain of its subsidiary companies, in which I am directly or indirectly interested.

I am of the opinion that it would be inadvisable for me to participate as such Director General, in the transaction of any business between the Emergency Fleet Corporation and any of the said companies, with especial reference to the making of contracts with or the giving of orders to such companies, and therefore request that all business between the United States Shipping Board Emergency Fleet Corporation and the companies named below may be handled entirely by such other officers or agents of the Emergency Fleet Corporation as you may designate.

Bethlehem Steel Corporation.
Bethlehem Steel Company.
Bethlehem Steel Bridge Corporation.
Bethlehem Loading Company.
Fore River Shipbuilding Corporation.
The Detrick & Harvey Machine Company.
Bethlehem Steel Products Company.
Ore Steamship Corporation.
Saucon Land & Improvement Company.
Bethlehem Securities Company.
Bethlehem Shipbuilding Corporation, Ltd.
Union Iron Works Company.
Union Iron Works Dry Docks Company.

Yours very truly,

C. M. Schwab.

Resolved, That all contracts of the United States Shipping Board Emergency Fleet Corporation,

after they are approved by the Vice President and Secretary, whether for the Operating or Construction Divisions, be submitted to the Board of Trustees for their approval, and then approved by the officers of the Corporation authorized by the Board of Trustees and formally executed.

SUMMARY OF INDUSTRIAL GROUP STATISTICS

YEAR 1927

Group	Gross Sales	Total Cost (Operating Cost, Administrative, Selling and General Expense; Taxes (excluding Federal Income); Depreciation and Depletion)	Profit Amount	Profit % of Total
Automobiles and Trucks	$1,632,379,291	$1,325,400,930	$ 306,978,361	23.1
Cast Iron Pipe	38,866,534	34,836,350	4,030,184	12.4
Cement	40,355,382	33,613,749	6,741,603	20.4
Chemicals	75,435,220	53,764,289	21,670,981	40.2
Copper and Brass	286,678,233	238,201,118	31,375,115	13.7
Electrical Equipment	489,146,[illegible]	432,100,848	60,046,011	[illegible]
Electric Light & Power	218,578,[illegible]	142,877,851	75,700,327	[illegible]
Equipment, Supplies & Construction	116,879,156	106,495,157	10,383,999	9.7
Food Products	144,229,797	107,155,482	37,073,315	34.6
Household Products	60,329,135	48,973,039	11,356,096	23.2
Lead and Zinc	12,421,905	8,789,742	3,632,163	41.3
Machinery	86,113,355	80,010,921	6,102,382	12.7
Office & Business Equip.	58,898,751	49,866,037	9,232,714	18.5
Oil Producing & Refining	808,040,844	546,068,099	61,972,745	11.3
Paper & Paper Products	78,429,695	62,357,993	13,071,702	20.9
Railroads	1,892,082,280	1,329,822,826	262,322,424	19.7
Steel	1,336,047,198	1,194,416,846	140,630,352	11.7
Telephone & Telegraph	927,344,673	686,923,468	241,421,205	35.2
Tobacco	19,807,249	15,471,193	3,336,056	21.6
Total	$7,773,881,613	$6,488,843,918	$1,307,007,695	20.1

YEAR 1928

Automobiles and Trucks	$1,821,719,677	$1,388,045,189	$ 233,674,819	20.1
Cast Iron Pipe	43,365,803	36,819,893	6,545,910	18.7
Cement	31,873,869	25,479,842	6,094,327	23.9
Chemicals	71,858,998	52,821,271	19,037,727	36.4
Copper and Brass	304,098,107	268,720,738	35,377,372	13.2
Electrical Equipment	482,980,904	433,990,961	50,989,943	11.8
Electric Light & Power	200,412,300	136,236,207	64,176,283	47.1
Equipment, Supplies & Construction	123,380,389	109,331,480	14,048,909	12.8
Food Products	131,668,736	93,076,140	38,592,596	41.4
Household Products	62,337,487	49,247,108	13,098,379	26.6
Lead and Zinc	15,283,083	9,786,784	5,496,289	56.2
Machinery	86,832,749	49,474,300	7,088,380	14.3
Office & Business Equip.	57,936,872	48,834,236	9,102,636	18.6
Oil Producing & Refining	638,979,113	506,853,614	132,855,499	26.2
Paper & Paper Products	69,320,821	61,471,092	7,849,729	12.7
Railroads	1,660,518,025	1,375,324,721	285,193,304	20.7
Steel	1,811,379,065	1,326,404,489	184,975,176	13.9
Telephone & Telegraph	843,680,175	621,162,370	222,467,805	35.8
Tobacco	17,965,062	15,378,978	2,618,084	17.0
Total	$7,854,361,065	$6,480,943,140	$1,365,417,925	21.1

6-4-29.

EXHIBIT B-11

UNITED STATES STEEL CORPORATION

	1918	1917	1916
Gross Sales (Includes Inter-Co of Transp. & Misc. Cos.)	$1,339,768,771	$1,306,558,022	$934,199,238
Total Cost Operating Cost, Administrative, Selling and General Expense Taxes (excluding Federal Income Tax), and Depreciation and Depletion	918,511,913	829,025,703	626,589,928
(Amount	$421,256,858	$477,532,319	$307,609,310
Profit ((% of Total (Cost	45.86	57.60	49.10

6-3-29

EXHIBIT B-14

WESTERN UNION TELEGRAM

Washington, D. C., March 19, 1918.

Bethlehem Shipbuilding Corporation,
South Bethlehem, Pa.

Letter relative contract for additional vessels to be constructed at Sparrows Point Plant sent to Bethlehem Steel Corporation in error stop above company have been informed that our letter eighteenth instant intended for you.

UNDERWOOD.

EXHIBIT B-17

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION

Philadelphia, Pa., June 27th, 1918.

The Bethlehem Shipbuilding Corporation
So. Bethlehem, Pa.

Gentlemen:

Sparrows Point Plant—
Troop ships on additional ways.

Reference is made to recent conference with Mr. Brown with respect to terms of contract for construction of six (6) troop ships on the three additional ways at Sparrows Point.

Your proposition was based on an estimated cost of $4,160,000.00 per ship. This estimate is now being checked by the Division of Steel Ship Construction, and it is hoped that their figures will be received shortly.

I cannot recommend, under your present forms of contract, that you should receive more than the following.

A fixed fee of $350,000.00 per vessel and 50% of the savings based on the cost estimated by the Division of Steel Ship Construction in checking your estimate of cost, your share of such savings to be limited to the sum of $200,000.00. You will appreciate, in this connection, that your estimated cost of $4,160,000.00 per vessel is subject to change should the estimate made by the Division of Steel Ship Construction prove it to be excessive.

Kindly advise whether you can see your way clear to revise your proposal in this regard.

Very truly yours,

Morris Down Ferris,
Manager, Contract Division

EXHIBIT B-18

July 29, 1918.

Mr. Charles Piez, Vice President,
U. S. Shipping Board,
Emergency Fleet Corporation,
Philadelphia, Pa.

Dear Sir:

Subject: Construction of six troop ships at Sparrow's Point.

Referring to contract for the six (6) troop ships to be constructed at this Company's Sparrow's Point Plant, and to the Fleet Corporation's statement to me on Friday last that it would not allow a fee of over Three Hundred and Twenty Thousand ($320,000.00) Dollars for the construction of these ships this Company wishes to clearly state in accepting this contract on the above basis that it feels that it is not being properly recompensed for its services and that for the volume of work entailed and the time and labor and shipbuilding skill involved, the fee of Four Hundred Thousand ($400,000.00) Dollars for which it has contended, is the smallest that could properly have been provided.

The written memorandum submitted at the conference offered this Company a fee of Three Hundred and Fifty Thousand ($350,000.00) Dollars for this work and a further memorandum reports an earlier conference with the Vice President of the Company and states that he offered this Company a fee of Three Hundred and Fifty Thousand ($350,000.00) Dollars.

The Bethlehem Shipbuilding Corporation, Limited has however uniformly taken the position that it would do nothing to obstruct the building of ships necessary because of the National emergency and it is solely because of this position that it hereby accepts this contract on this basis that offers entirely inadequate profit returns, both in comparison with the effort involved and in comparison with the other contracts awarded it by the Emergency Fleet Corporation.

There are other modifications in the protection which this Company must ask in view of the above reduction in fee which will be the subject of conference when forms of contracts are prepared for execution by the Emergency Fleet Corporation.

Very truly yours,

Bethlehem Shipbuilding Corporation, Ltd.

J. W. Powell,

Vice President.

EXHIBIT B-19

UNITED STATES SHIPPING BOARD
Emergency Fleet Corporation,
Philadelphia.

August 1, 1918.

Mr. J. W. Powell, Vice President,
The Bethlehem Shipbuilding Corporation,
Bethlehem, Pa.

Dear Sir:

In reply to yours of July 29th, would say that both Mr. Coonley and Mr. Ferris feel that they

have neither committed themselves nor assented to a fee of $350,000 and that the appearance of this amount in one of the communications to you is due to a clerical error.

It has been the endeavor of the officers of the Fleet Corporation to decide upon a just and compensatory fee for the work which your Corporation has undertaken to do for us at Sparrows Point. After a review of all of the circumstances and conditions, and after consideration of the fees paid to other contractors for substantially similar work we have arrived at the conclusion that $320,000 is a just fee for the construction of these vessels.

We shall be very glad to consider any suggestions you have to make concerning modification of terms in the final contracts, but these modifications should not add to the pecuniary return which your Corporation is to receive for this work.

Very truly yours,

Charles Piez,
Vice President.

EXHIBIT B-20

(Letterhead of Bethlehem Shipbuilding Corporation, Ltd.)

August 12, 1918.

Subject: Contract for Construction Six Troop Ships at Sparrows Point Plant.

United States Shipping Board,
Emergency Fleet Corporation,
140 North Broad Street,
Philadelphia, Pa.

Attention: William H. White, Assistant General Counsel.

Gentlemen:

We are forwarding herewith, three copies of the contract covering the construction of six troop ships at the Sparrows Point Plant of the Bethlehem Shipbuilding Corporation, Ltd., duly executed together with Resolutions of Board of Directors to be attached thereto. We are also forwarding three additional copies for the use of the United States Shipping Board Emergency Fleet Corporation.

These contracts are submitted with the understanding that the base price of the contract is subject to revision after you have checked the same and the final base price is to be mutually satisfactory to the parties to the contract. It is our understanding that this price will be checked and agreed to on or before October first, 1918.

We invite attention to the attached writing marked "Exhibit A," in the contract, covering

schedule of material, price, etc. which are in accord and have been agreed to in connection with the contract covering the construction of 20 troop ships at the Union Plant of the Bethlehem Shipbuilding Corporation, Ltd.

It is also understood that the plans and specifications to be attached to and form a part of this contract are to be duplicates in all respects of those attached to and forming a part of the contract for the two troop ships now being constructed at the Sparrows Point Plant of the Bethlehem Shipbuilding Corporation, Ltd., this contract being numbered 182.

The draft of this contract has been submitted to and agreed upon between Mr. Piez of the United States Shipping Board Emergency Fleet Corporation and Mr. Powell, Vice President of the Bethlehem Shipbuilding Corporation, Ltd.

Your early attention to this matter will be appreciated.

Yours very truly,

Bethlehem Shipbuilding Corporation, Ltd.

H. Brown,
Technical Manager.

EXHIBIT B-23

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION
Philadelphia, Pa.

December 21, 1918.

Bethlehem Shipbuilding Corporation,
South Bethlehem, Pa.
Attention—Mr. J. Powell

Gentlemen:

The Board of Trustees of the Emergency Fleet Corporation, at its meeting on December 17th, passed a Resolution of which the following is a true copy:

"Whereas, A contract has been executed by the executive officials of the Emergency Fleet Corporation and the Bethlehem Shipbuilding Corporation, Ltd., for the construction of six troop ships at Sparrows Point; Md., which contract has been approved by the Comptroller Steel Ship Construction Division, Contract Division and the General Counsel:

Be it resolved, That the action of the executive officials of the Emergency Fleet Corporation in executing the aforesaid contract be, and the same hereby, is approved, with the proviso that the General Manager be requested to revise the base price in the light of the changing conditions, or else to stipulate that correction in this price be made to accord with the probable decline in the cost of materials entering into the vessels and the probable increased efficiency of labor owing to the easing off

of the labor market, it being made clear to the Board that the vessels, when contracted for many months ago, were to be troop ship type, since which time the plans have been modified to convert the vessels into high class passenger and cargo ships with a speed of seventeen to eighteen knots an hour."

You will note the suggestions as to revision of the estimated basis price and as to change in type of ship.

Will you please state how much of the materials for these ships you have already purchased or committed yourselves for?

Will you also consider the revisions suggested and confer with me at your early convenience?

Very truly yours,

Chester W. Cuthell,
General Counsel.

EXHIBIT B-24

December 28, 1918.

Subject: Sparrows Point Contracts for Six Troopships.

Attention: Mr. C. W. Cuthell, Esq. Gen'l. Counsel.

United States Shipping Board,
Emergency Fleet Corporation,
140 N. Broad Street,
Philadelphia, Pa.

Dear Sir:

Receipt is acknowledged of the Fleet Corporation's letter of the 21st inst. informing this Company of the resolution passed by the Board of Trustees of the Emergency Fleet Corporation at its meeting on December 17th, approving the action of the executive officials of the Emergency Fleet Corporation in executing the contract between the Emergency Fleet Corporation and the Bethlehem Shipbuilding Corporation, Ltd., for the construction of six troopships at its Sparrows Point Plant at Sparrows Point, Maryland; with certain proviso with reference to which the following is submitted.

The Vice-president of the United States Shipping Board Emergency Fleet Corporation under date of June 22d, 1918, forwarded this Company an agreement dated June 21st, 1918, covering the completing of the plant at Alameda and the construction of certain troopships therein. Item III of this letter reads as follows:

"The base price of Four Million, Four Hundred and sixty-four Thousand Dollars ($4,464,000) for each vessel shall be increased or decreased in accordance with any increase or decrease in the cost of the raw material at the price shown in the memorandum attached to this letter."

The attached memorandum included base prices for all of the principal materials entering into the construction of these vessels. As Exhibit A, attached to and forming a part of the contract for the construction of the six troopships at this Company's Sparrows Point Works, the same schedule of material prices is affixed, and the above letter from the Emergency Fleet Corporation is referred to so that the contract as written takes account of changes in the material market.

The nineteenth clause, page 10 of the contract for these vessels states: "Should the rate of wages actually paid by the contractor be increased or decreased by the direction of or with the approval of the owner from those of the schedule aforesaid, said estimated cost shall be increased or decreased by the amount that such increase or decrease of wages increases or decreases the relative labor cost from those that would be incurred were the affixed schedule in force during the whole period of the construction of the vessels."

So far as shipbuilding labor is concerned, there is no reason to expect any different condition with reference thereto during the period of this contract insofar as "increased efficiency of labor owing to easing off of the labor market" is concerned. And the base price has already been set so low that no modification for this reason is possible. It is under-

stood that when the designs which cover the changes in these vessels, owing to their conversion from troopships to passenger and cargo ships, are completed, this will be treated as a change as provided by the nineteenth clause of the contract.

Probably 85% of the material for these vessels is already under contract.

With reference to your suggestion for a conference—if the above letter does not make clear the points raised by the Board of Trustees, I shall be glad to call on you at your convenience.

Very truly yours,

J. W. Powell,
Vice President.

EXHIBIT B-25

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION
Philadelphia, Pa.

February 1, 1919.

Mr. J. W. Powell, Vice President,
Bethlehem Shipbuilding Corporation, Ltd.
Bethlehem, Pa.

Dear Sir:

The Board of Trustees, after further consideration, approved, at its last meeting, contract for the six (6) Troop Ships at your Sparrow's Point Plant in its present form.

Very truly yours,

Charles Piez,
Director General.

EXHIBIT B-28

U. S. Shipping Board Building
1319 F. Street NW.

UNITED STATES SHIPPING BOARD
Emergency Fleet Corporation
Washington

January 5, 1918.

Memorandum for the Vice President & General Manager:

Bethlehem Shipbuilding Corporation, Ltd.

We hand you herewith the Bethlehem Shipbuilding Corporation's proposal dated December 19, for additional construction at their various plants, amounting in all to 19 vessels, exclusive of tugs. It may be noted that, with the exception of three ships, the vessels in question are troop ships and tankers—ships of a type that only real shipbuilders can produce satisfactorily. As is well known, we have been having difficulty in placing such vessels.

We wish to place on record the fact that the Bethlehem Shipbuilding Corporation's representatives have insisted on comparatively high prices for these vessels; that they have only with difficulty been persuaded to quote us on the types of ships referred to; and, that their attitude has been characterized by an arbitrary refusal to guarantee or stand behind delivery dates. In other words, it was difficult to persuade them to quote even a tentative delivery date, and they refused positively to accede to a bonus and penalty clause for delivery.

The letter herewith, addressed to the Bethlehem Shipbuilding Corporation, in reply to their proposal, has been prepared for your signature and is now presented with the recommendation that it be signed. While the prices we have agreed to, with representatives of the Bethlehem Shipbuilding Corporation, are not satisfactory to us, nevertheless, they represent a material reduction from the prices quoted by that Corporation. Realizing that the Nation will need these vessels, we have been actuated by the belief that further delay in placing the contracts should be eliminated and we believe that we have made the best compromise possible under very difficult conditions.

F. T. Bowles,
Manager,
Division of Steel Ship Construction.
G. S. Radford,
Manager,
Contract Division.

Enclosures.

EXHIBIT B-29

January 5, 1918.

Bethlehem Shipbuilding Corporation, Ltd.,
Wilmington, Delaware.

Gentlemen:

Proposal Covering Supply of Additional Tonnage.

Referring to your proposal covering supply of additional tonnage, dated December 19, 1917, and in

confirmation of the understanding between your Messrs. Powell and Brown, on the one hand, and Admiral Bowles and Mr. Radford, representing the Fleet Corporation, on the other, at the conference held on January 3; I beg to inform you that we are having drafts of contracts prepared as follows:

THE UNION PLANT:

Five (5) tank vessels of about 10,100 tons d.-w., as described in your letter of December 19; to be complete with military requirements in accordance with plans and specifications to be submitted to and approved by the Fleet Corporation, and for delivery —the first vessel, March 15, 1919; the second, April 15, 1919; the third, May 15, 1919; the fourth, June 7, 1919; and the fifth July 1, 1919.

These vessels to be constructed on the basis of cost plus a fixed fee of $210,000 each. The estimated base price is to be $2,120,000; any saving to be divided equally between the owner and the contractor. Cost will be in general accordance with the definition in the latest Navy Department destroyer contract, with such suitable modifications as are necessary to bring it into line with the Fleet Corporation's practice in this type of contract. There will be no bonus and penalty clause. The estimated base price is based on the present wage scale and the contract will provide for adjustment in case of change from this scale.

It is our understanding that your Mr. Powell is on his way to the Union Plant and that he will promptly advise us if you are able to take five additional similar vessels under the above conditions with an extension of plant, involving the expendi-

ture of about $500,000—Mr. Powell to furnish the exact figure. If the Fleet Corporation desires, it may order these additional vessels under the above conditions by providing the funds for said plant extension, such extension of plant to remain the property of the Fleet Corporation. The contractor to have the option of purchasing at completion of the contract, for a price to be agreed upon.

SPARROWS POINT PLANT:

Three (3) tank vessels of about 10,100 tons d. w., as described in the case of the Union Plant, except that the fixed fee is to be $200,000 per vessel and the estimated base price, $2,070,000 per vessel. The delivery dates to be February 1, 1919, and one per month thereafter. Also,—

Two (2) troop ships, in general accordance with the Emergency Fleet Corporation's plans and specifications, to be constructed on the basis of cost plus ten per cent. It is our understanding that you will shortly furnish us with your estimated delivery dates for these vessels.

HARLAN PLANT:

Three (3) tank vessels of about 7,500 tons d. w., as described in your letter of December 19, and in accordance with plans and specifications to be submitted to the owner for approval complete, with full military requirements. The contract to be in principle like that described above for the Union Plant vessels. The fixed fee to be $160,000 per vessel and the estimated base price $1,612,000 per vessel. The delivery dates to be March 1, 1919, May 1, 1919, and July 1, 1919. Also,—

Three (3) cargo vessels of about 7,400 tons d. w., as described in your letter of December, 1919, and in accordance with plans and specifications to be submitted to the owner for approval, including full military requirements. The contract to be in principle like that described in the case of the Union Plant. The fixed fee to be $125,000 per vessel and the estimated base price $1,350,000 per vessel. The delivery dates to be February 1, 1919, April 1, 1919 and June 1, 1919.

It is understood that the plant extension, not to exceed $125,000 (you are to furnish the exact figures in detail for our approval within a week) is to be paid for by the owner; the contractor to have the option of buying in this extra plant at a price to be agreed upon at the completion of the work; otherwise, the additional plant remains the property of the Fleet Corporation.

MOORE PLANT:

Six (6) sea-going tugs in general accordance with the Emergency Fleet Corporation's plans and specifications, the contract to be in accordance with the principle outlined above. The fixed fee to be $30,000 per vessel and the estimated base price $300,000. The delivery dates to be—the first vessel in eight months from date of contract and two per month thereafter. The contract will provide for owner's sixty day option for the additional fourteen tugs, of such number less than fourteen as the owner may elect. In case the option is exercised, the fee will be $35,000 but the other conditions will remain the same.

FORE RIVER PLANT:

Three (3) tank vessels of about 9,100 tons d. w., as described in your letter of December 19, in accordance with plans and specifications to be approved by the owner, complete with military requirements. The contract will be in principle like that outlined in the case of the Union Plant. The fixed fee to be $185,000 and the estimated base price $1,865,000. The delivery dates to be March 1, May 1, and July 1, 1919, respectively.

Please confirm your acceptance of the above as soon as practicable.

Very truly yours,
Charles Piez,
Vice President & General Manager.

Rd.
GSR:EMS
F. T. B.

EXHIBIT B-30

UNITED STATES SHIPPING BOARD
Emergency Fleet Corporation
Washington

January 5, 1918.

Bethlehem Shipbuilding Corporation, Ltd.,
South Bethlehem, Pa.

Gentlemen:

Re: Requisitioned Hulls—Union Plant
Nos. 150-151-153-170

Confirming an agreement reached at a conference held in the office of the Manager of the Division of

Steel Ship Construction, Emergency Fleet Corporation, January 3, 1918, between Admiral Bowles and your Mr. Powell, regarding the just price and reasonable compensation which the Emergency Fleet Corporation shall pay to the Bethlehem Shipbuilding Corporation, Ltd., for completing the Union Plant stock ships known as their Hulls Nos. 150, 151, 153 and 170; payments for the completion of these vessels shall be on actual cost together with a profit to you as follows: Hulls Nos. 150 and 153—$212,400.00 each; Hull No. 151—$210,600.00; and Hull No. 170—$216,000.00.

These hulls are to be completed in accordance with the plans and specifications which you have furnished to the Corporation, together with all changes which have been ordered to date with full military requirements, and when completed, are to meet and pass the inspection of the United States Steamboat Inspection Service for duty in the War Zone. It is requested that you furnish District Officer A. F. Pillsbury, 310 Sansome Street, San Francisco, California, with copies of the plans and specifications for his use.

$2,124,000.00 each for Hulls 150 and 153:

If, however, the actual costs of the ships to you, are less than $2,106,000.00 for Hull No. 151; and $2,160,000.00 for Hull No. 170, the Corporation is to have a one-half share in the saving. If the Corporation authorizes any increases in your wage scale at your Union Plant above the wage scale of the Wage Adjustment Board as of January 3, 1918, the increase in cost of labor caused thereby and expended on each of these hulls, shall augment the above amounts for its respective hull.

The actual cost shall be generally as defined in the Revenue Bill approved September 8, 1916, Section 302, so far as the requirements of said Revenue Bill are applicable. The actual cost shall include the following and items similar thereto in principle:

a. The net costs after deducting all discounts obtained, of labor and materials, machinery, equipment, and supplies furnished by the builder entering into or expended in the manufacture, building, or construction of the vessel, and other direct charges, such as insurance on the vessel, etc.

b. A proper proportion of running expenses, including ordinary rentals, cost of ordinary repair and maintenance, light, heat, power, insurance, management, salaries, and other indirect charges.

c. A proper proportion of interest accrued within the taxable year on bonds or other debts or loans, contracted to meet the needs of the business and the proceeds of which have been actually used to meet such needs.

d. A proper proportion of taxes of all kinds accrued during the taxable year with respect to the business or property, but such taxes shall not be held to include Federal income or excess profits taxes.

e. A proper proportion of physical losses actually sustained within the taxable year in connection with the business, including losses from fire, flood, storm, riot, vandalism, any acts of God, acts of war, or other casualties, and not compensated for by insurance or otherwise.

Spoiled work, when not within the control of the builder, and allowing for the natural and ordinary run of mistakes made by the workmen and others under present conditions, will be allowed as an element of actual cost; but defective and spoiled work resulting from carelessness, and which should have been avoided by the exercise of reasonable and usual care, and diligence by the builder or his supervising agent, shall be disallowed as an element either of direct or overhead cost.

Yours very truly,

(sd) Charles Piez,
Vice President & General Manager.

EXHIBIT B-31

UNITED STATES SHIPPING BOARD
Emergency Fleet Corporation
Washington

January 5, 1918.

Bethlehem Shipbuilding Corporation, Ltd.,
South Bethlehem, Pa.

Gentlemen:

Re: Requisitioned Hull No. 176
Sparrows Point Plant.

Confirming an agreement reached at a conference held in the office of the Manager of the Division of Steel Ship Construction, Emergency Fleet Corporation, January 3, 1918, between Admiral Bowles and your Mr. Powell, regarding the just price and

reasonable compensation which the Emergency Fleet Corporation shall pay to the Bethlehem Shipbuilding Corporation, Ltd., for completing Sparrows Point Plant stock ship, known as their Hull No. 176; payment for the completion of this vessel shall be on actual cost together with a profit to you of $129,500.00.

If, however, the actual cost of the ship to you, is less than $1,295,000.00, the Corporation is to have a one-half share in the saving. If the Corporation authorizes any increase in your wage scale at your Sparrows Point Plant above the wage scale now in force at the Navy Yard at Philadelphia, the increase in cost of labor caused thereby and expended on this hull shall augment the above amount.

The actual cost shall be generally as defined in the Revenue Bill approved September 8, 1916, Section 302, so far as the requirements of said Revenue Bill are applicable. The actual cost shall include the following and items similar thereto in principle:

a. The net costs, after deducting all discounts obtained, of labor and materials, machinery, equipment, and supplies furnished by the builder entering into or expended in the manufacture, building, or construction of the vessel, and other direct charges, such as insurance on the vessel, etc.

b. A proper proportion of running expenses, including ordinary rentals, cost of ordinary repairs and maintenance, light, heat, power, insurance, management, salaries and other indirect charges.

c. A proper proportion of interest accrued within the taxable year on bonds or other debts or loans,

contracted to meet the needs of the business and the proceeds of which have been actually used to meet such needs.

d. A proper proportion of taxes of all kinds accrued during the taxable year with respect to the business or property, but such taxes shall not be held to include Federal income or excess profit taxes.

e. A proper proportion of physical losses actually sustained within the taxable year in connection with the business, including losses from fire, flood, storm, riot, vandalism, any acts of God, acts of war, or other casualties, and not compensated for by insurance or otherwise.

Spoiled work, when not within the control of the builder, and allowing for the natural and ordinary run of mistakes made by the workmen and others under present conditions, will be allowed as an element of actual cost; but defective and spoiled work resulting from carelessness, and which should have been avoided by the exercise of reasonable and usual care and diligence by the builder or his supervising agents, shall be disallowed as an element either of direct or overhead cost.

This vessel when completed shall be as near as may be, a duplicate of Sparrows Point Hull No. 173, with all changes ordered to date including full military requirements. The plans are to be approved by Lloyd's and the vessel during construction subject to Lloyd's survey and when completed, to be satisfactory to and pass the inspection of the

United States Steamboat Inspection Service for duty in the War Zone.

Very truly yours,

(sd) Charles Piez,
Vice President and General Manager.

EXHIBIT B-33.

4/3/31
WCM
M&R

BETHLEHEM SHIPBUILDING CORPORATION, LTD.

Estimating Division
9100 TON Tankers

Hull No.	Keel	Dates Del.		Hours Each	Rel. to 1244	
1244	Apr.	1915	Feb. 1916			
1245	June	1915	Apr. 1916	764,810		
1253	May	1916	June 1917			
1254	Aug.	1916	July 1917	824,142	1.08	
1268	June	1917	Sep. 1918			
1269	Dec.	1917	Sep. 1918	1,158,365	1.515	
1376	Fb.	1919	July 1919			
1377	May	1919	Nov. 1919	870,820	1.14	783170
1378	Mar.	1919	Sept. 1919			
						2½%
1379	Apr.	1919	Oct. 1919			
1380	May	1919	Nov. 1919	695,519	.91	
1381	May	1919	Dec. 1919			

ORDER TRANSMITTING PAPERS AND EXHIBITS ORIGINALLY INTRODUCED IN EVIDENCE

(Filed April 24, 1939)

Before Dickinson J.

And now April 24, 1939 on motion of counsel for the respective parties in the above entitled causes No. 11970 and No. 3315, pursuant to Rule 75 (i) of the Federal Rules of Civil Procedure, it is

Ordered that the following papers and exhibits which were originally admitted in evidence at the hearing before William Clarke Mason, Esq., referee in the above entitled cause No. 11970 and Special Master in the above entitled cause No. 3315, be transmitted to the Circuit Court of Appeals for the Third Circuit to constitute a part of the record on appeal to the Circuit Court of Appeals for the Third Circuit in both of the above entitled causes No. 11970 and No. 3315.

1. Exhibit G-34½, being original chart prepared by Harry Brown.

2. Exhibit G-156, being a photostat of chart prepared by Harry Brown.

3. Exhibits G-157 and G-158, being two destroyer contracts dated December 6, 1917, executed between Bethlehem Shipbuilding Corporation, Ltd. and the United States of America.

4. Exhibits G-171 (a) and G-171 (b) being enlarged photostats of the chart prepared by Harry Brown.

5. Exhibit G-172, being maximum prices of iron and steel products of the American Iron and Steel Institute, pages 49, 50 and 51, being base prices approved September 24, 1917, applied to steel structural shapes.

6. Exhibit G-173, being invoices for plates and shapes of Hulls 253 and 254 submitted by plaintiff at the defendant's request.

7. Exhibit G-204 being sketch of chart by Harry Brown.

8. Exhibits G-205 and G-206 being Contracts 158 and 159.

9. Exhibits B-3 and B-4 being statements showing cost of ships constructed by plaintiff compared with cost of ships built by other shipbuilders.

10. Exhibit B-8 being contract between American Shipbuilding Company and defendant, dated October 24, 1918.

11. Exhibit B-12 being statement adapting the basis of settlement in the American Shipbuilding Company contracts to plaintiff's contracts.

12. All of the testimony of Harry Brown at the Hearing before Owen J. Roberts, Esq.

13. Exhibit B-32, being computations prepared by Joseph A. Honsick.

By the Court,

DICKINSON, *J.*

No. June Term, 1924

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA

In Equity

THE UNITED STATES OF AMERICA,
Complainant;

vs.

BETHLEHEM STEEL CORPORATION; BETHLEHEM SHIPBUILDING CORPORATION, LTD.; BETHLEHEM STEEL COMPANY; FORE RIVER SHIPBUILDING CORPORATION; and UNION IRON WORKS COMPANY,
Defendants.

BILL OF COMPLAINT

(Filed April 17, 1925)

To the Honorable the Judges of the District Court of the United States for the Eastern District of Pennsylvania:

The United States of America, the complainant above named, by George W. Coles, United States Attorney for the Eastern District of Pennsylvania, its solicitor, brings this its bill of complaint by direction of the Attorney General against the Bethle-

hem Steel Corporation, Bethlehem Shipbuilding Corporation, Ltd., Bethlehem Steel Company, Fore River Shipbuilding Corporation, and Union Iron Works Company, and thereupon shows to the court and alleges as follows:

JURISDICTION

First. The defendant, *Bethlehem Steel Corporation*, is a corporation created, organized, and existing under the laws of the State of New Jersey. Defendant, *Bethlehem Shipbuilding Corporation, Ltd.*, is a corporation created, organized, and existing under the laws of the State of Delaware. Defendant, *Bethlehem Steel Company*, is a corporation created, organized, and existing under the laws of the State of Pennsylvania, and has its principal office at Bethlehem within the Eastern District of Pennsylvania, and is a citizen of the State of Pennsylvania and an inhabitant of the Eastern District of Pennsylvania. The defendant, *Fore River Shipbuilding Corporation*, is a corporation created, organized, and existing under the laws of the State of Massachusetts, and is an inhabitant of the District of Massachusetts. The defendant, *Union Iron Works Company*, is a corporation created, organized, and existing under the laws of the State of New Jersey, and an inhabitant of the District of New Jersey.

Second. The causes of action herein set forth arise under the laws of the United States, to wit, the Emergency Shipping Fund Provisions of the Urgent Deficiency Appropriation Act of June 15, 1917, and the acts amendatory thereof and supplementary thereto, and the Merchant Marine Act, 1920. The causes of action herein set forth, or part thereof, arose within the Eastern District of Pennsylvania,

in that many of the contracts hereinafter specifically referred to were made, executed, and delivered within the Eastern District of Pennsylvania, and that the moneys of the United States paid in connection therewith, hereby sought to be recovered or a large part thereof, were paid on behalf of the complainant, and received by the defendant Bethlehem Shipbuilding Corporation, Ltd., and other defendants within the Eastern District of Pennsylvania. The defendant Bethlehem Steel Company is jointly liable with the defendant Bethlehem Shipbuilding Corporation, Ltd., with respect to certain of the causes of action herein alleged, particularly with respect to part of the causes of action set forth in paragraphs Forty-second to Fifty-second, inclusive, of this bill.

THE SHIPPING BOARD AND FLEET CORPORATION

Third. Under the Act of Congress of September 7, 1916, (39 Statutes at Large 728), designated by the statutory name "Shipping Act, 1916", provision was made for the creation of a Board composed of five commissioners to be appointed by the President and to be known as the United States Shipping Board. Five commissioners were appointed accordingly by the President and confirmed by the Senate, and were organized and acted thereafter as the United States Shipping Board, with such powers and duties as were in and by said Act conferred, and continued so to act until after the passage of the Act of June 5, 1920, known by the statutory name "Merchant Marine Act, 1920". Under said Act last named the number of commissioners was increased to seven and said Shipping Board was reorganized accordingly, and has since acted, and is now acting, with all the

powers and duties conferred upon it by said Shipping Act, 1916, as amended by said Merchant Marine Act, 1920.

Fourth. In and by section 11 of said Shipping Act, 1916, (39 Statutes at Large 731), it is provided in part as follows:

> That the Board, if in its judgment such action is necessary to carry out the purposes of this Act, may form under the laws of the District of Columbia one or more corporations for the purchase, construction, equipment, lease, charter, maintenance, and operation of merchant vessels in the commerce of the United States. The total capital stock thereof shall not exceed $50,000,000. The Board may, for and on behalf of the United States, subscribe to, purchase, and vote not less than a majority of the capital stock of any such corporation, and do all other things in regard thereto necessary to protect the interests of the United States and to carry out the purposes of this Act.
>
> * * * At the expiration of five years from the conclusion of the present European War the operation of vessels on the part of any such corporation in which the United States is then a stockholder shall cease and the said corporation stand dissolved. The date of the conclusion of the war shall be declared by proclamation of the President. The vessels and other property of any such corporation shall revert to the Board. The Board may sell, lease, or charter such vessels as provided in section seven and shall dispose of the property other than vessels on the best available terms, and after

payment of all debts and obligations deposit the proceeds thereof in the Treasury to its credit. All stock in such corporations owned by others than the United States at the time of dissolution shall be taken over by the Board at a fair and reasonable value and paid for with funds to the credit of the Board. In case of disagreement such value shall be determined in the manner provided in section ten.

By section 13 of said Act it is further provided:

> That for the purpose of carrying out the provisions of sections five and eleven no liability shall be incurred exceeding a total of $50,000,000, and the Secretary of the Treasury, upon the request of the Board, approved by the President, shall from time to time issue and sell or use any of the bonds of the United States now available in the Treasury under the Acts of August fifth, nineteen hundred and nine, February fourth, nineteen hundred and ten, and March second, nineteen hundred and eleven, relating to the issue of bonds for the construction of the Panama Canal, to a total amount not to exceed $50,000,000; * * *

Fifth. Pursuant to said Section 11 of said Act, the said Board caused to be organized on April 16, 1917, under the Act of Congress of March 3, 1901, entitled "An Act to Establish a Code of Law for the District of Columbia", and the provisions thereof relating to corporations to be organized in said District, a corporation under the name, "United States Shipping Board Emergency Fleet Corporation", hereinafter referred to for brevity as the "Fleet Corporation", and, pursuant to Section 11 of said Act, said Board

for and in behalf of the United States, subscribed for all the capital stock of said corporation, amounting to fifty millions of dollars, which sum was paid therefor from the Treasury of the United States, and said corporation has since existed and is now existing with such corporate powers as are specified in its certificate of incorporation and in and by the said Code of Law for the District of Columbia, as limited and qualified by said Section 11 of the Shipping Act, 1916, and the acts amendatory thereof and supplementary thereto above referred to. At all times all the capital stock of said corporation has been owned by the United States, qualifying shares standing in the name of the trustees thereof.

DECLARATION OF WAR

Sixth. On the sixth day of April, 1917, the United States of America declared war upon the Imperial German Government, and active hostilities continued from that date until the signing of the armistice on the 11th day of November, 1918. A state of war continued until July 2, 1921, the date fixed under the proclamation by the President on November 14, 1921, of the treaty of peace between the United States and Germany and under the joint resolution of Congress of July 2, 1921.

EMERGENCY SHIPPING LEGISLATION DURING WAR

Seventh. Under Clause 11 of Section 8 of Article I of the Constitution of the United States the power is expressly granted to Congress "To declare War", and under Clause 12 of the same section "To raise and support Armies", and under Clause 18 of the

same section "To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers and all other Powers vested by this Constitution in the Government of the United States or in any Department or Officer thereof". Under and pursuant to the express powers so granted to Congress by the Constitution the Congress of the United States passed an act approved by the President on June 15, 1917 (40 Statutes at Large 182), known as the "Shipping Fund Provisions" of the Urgent Deficiency Appropriation Act, and said provisions as amended by the Act of Congress of April 22, 1918 (40 Statutes at Large 535), and the Act of Congress of November 4, 1918 (40 Statutes at Large, 1020), provided in part as follows:

ACT JUNE 15, 1917, AS AMENDED

The President is hereby authorized and empowered, within the limits of the amounts herein authorized—

(a) To place an order with any person for such ships or material as the necessities of the Government, to be determined by the President, may require during the period of the war, and which are of the nature, kind, and quantity usually produced or capable of being produced by such person.

(b) To modify, suspend, cancel, or requisition any existing or future contract for the building, production, or purchase of ships or material or take possession, lease, or assume control of any street railroad, interurban rail-

road, or part thereof, cars and other equipment necessary to operation.

(c) To require the owner or occupier of any plant in which ships or materials are built or produced to place at the disposal of the United States the whole or any part of the output of such plant, to deliver such output or part thereof in such quantities and at such times as may be specified in the order.

(d) To acquire, construct, establish, or extend any plant, and in pursuance thereof to purchase, requisition, or otherwise acquire title to or use of land, improved or unimproved, or interest therein, and to requisition and take over for use or operation by the United States any plant or any part thereof without taking possession of the entire plant, whether the United States has or has not any contract or agreement with the owner or occupier of such plant.

(e) To purchase, requisition, or take over the title to or the possession of, for use or operation by the United States, any ship now constructed or in the process of construction or hereafter constructed, or any part thereof, or charter of such ship.

(f) * * *.

(g) In pursuance of the foregoing powers, or any of them, to make advance payments or loans of such amounts and upon such terms as the President may deem necessary and proper.

(2) Compliance with all orders issued hereunder shall be obligatory on any person to whom such order is given, and such order shall take

precedence over all other orders and contracts placed with such person. If any person owning any ship, charter, or material, leasing or operating any plant equipped for the building or production of ships or material shall refuse or fail to comply therewith or to give to the United States such preference in the execution of such order, or shall refuse to build, supply, furnish, or manufacture the kind, quantities, or qualities of the ships or materials so ordered at such reasonable price as shall be determined by the President, the President may take immediate possession of any ship, charter, material, or plant of such person, or any part thereof without taking possession of the entire plant, and may use the same at such times and in such manner as he may consider necessary or expedient.

(3) Whenever the United States shall cancel, modify, suspend, or requisition any contract, make use of, assume, occupy, requisition, acquire, or take over any plant or part thereof, or any ship, charter, or material, in accordance with the provisions hereof, it shall make just compensation therefor, to be determined by the President, and if the amount thereof so determined by the President is unsatisfactory to the person entitled to receive the same, such person shall be paid seventy-five per centum of the amount so determined by the President and shall be entitled to sue the United States to recover such further sum as, added to said seventy-five per centum, will make up such amount as will be just compensation therefor, in the manner provided for by section twenty-four, paragraph twenty, and section one hundred and forty-five of the Judicial Code.

(4) The President may exercise the power and authority hereby vested in him and expend the money herein and hereafter appropriated through such agency or agencies as he shall determine from time to time.

Clause (g) above quoted was added by said Act of November 4, 1918.

EXECUTIVE ORDERS

Eighth. Under date of July 11, 1917, the President of the United States, by virtue of the authority in him vested by said Act of June 15, 1917, made an Executive order, which reads as follows:

> Delegating to the Shipping Board and the Emergency Fleet Corporation the powers granted the President by the emergency shipping legislation.
>
> By virtue of authority vested in me in the section entitled "Emergency shipping fund" of an act of Congress entitled "An act making appropriations to supply urgent deficiencies in appropriations for the Military and Naval Establishments on account of war expenses for the fiscal year ending June thirtieth, nineteen hundred and seventeen, and for other purposes", approved June 15, 1917, I hereby direct that the United States Shipping Board Emergency Fleet Corporation shall have and exercise all power and authority vested in me in said section of said act in so far as applicable to and in furtherance of the construction of vessels, the purchase or requisitioning of vessels in process of construction, whether on the ways or already

launched, or of contracts for the construction of such vessels, and the completion thereof, and all power and authority applicable to and in furtherance of the production, purchase, and requisitioning of materials for ship construction.

And I do further direct that the United States Shipping Board shall have and exercise all power and authority vested in me in said section of said Act in so far as applicable to and in furtherance of the taking over of title or possession, by purchase or requisition, of constructed vessels, or parts thereof, or charters therein, and the operation, management, and disposition of such vessels, and of all other vessels heretofore or hereafter acquired by the United States. The powers herein delegated to the United States Shipping Board may, in the discretion of said board, be exercised directly by the said board, or by it through the United States Shipping Board Emergency Fleet Corporation, or through any other corporation organized by it for such purpose.

Woodrow Wilson.

July 11, 1917.

Ninth. Under date of December 3, 1918, the President of the United States, by virtue of the authority in him vested by said Act of June 15, 1917, made a further Executive order, which reads as follows:

Delegating to the United States Shipping Board and to the United States Shipping Board Emergency Fleet Corporation, respectively, powers granted to the President by Acts of Congress relative to the emergency shipping fund and approved on or prior to November 4, 1918.

Whereas, by Executive order, No. 2664, dated July 11, 1917, I delegated to the United States Shipping Board and to the United States Shipping Board Emergency Fleet Corporation, respectively, certain powers vested in me under the section entitled "Emergency shipping fund" of the urgent deficiency appropriation act approved June 15, 1917; and

Whereas since the issuance of said Executive order the said powers granted in said act have been variously affected or extended by the section entitled "Emergency shipping fund" of the urgent deficiency appropriation act approved October 6, 1917, by public act No. 138, Sixty-fifth Congress, approved April 22, 1918, amending said section of said act of June 15, 1917, and by the sections entitled "Emergency shipping fund" in the sundry civil appropriation act approved July 1, 1918, and in the first deficiency appropriation act, 1919, approved November 4, 1918, respectively.

Now, therefore, by virtue of the authority vested in me by said laws, supplementing said order No. 2664, but in no way limiting or restricting the effect thereof, or acts heretofore done in pursuance thereof, I do hereby delegate all the power and authority so vested in me, and do direct that—

1. The United States Shipping Board Emergency Fleet Corporation shall have and exercise all power and authority now vested in me by said laws with reference to any and all activities which may be directly or indirectly applicable to ship or plant construction; and

2. The United States Shipping Board shall have and exercise, subject to its discretion in turn to delegate such exercise as provided in said Executive Order No. 2664, all power and authority now vested in me by said laws with reference to constructed dry docks, marine railways, and piers, and to constructed vessels or parts thereof, or charters therein; to the operation, management, and disposition of such dry docks, marine railways, piers, and vessels, and to such other matters as are not herein mentioned.

3. All acts heretofore done by said corporation or by said board, with reference, respectively, to the kinds of power or authority herein delegated to each, and which could have been properly done by me under such statutes or any of them, be, and they are hereby, ratified and confirmed.

Woodrow Wilson.

December 3, 1918.

FLEET CORPORATION AN AGENT OF THE UNITED STATES

Tenth. Each and every action taken by the Fleet Corporation as hereinafter alleged was taken solely by virtue of the power and authority conferred upon the President of the United States in and by the said Act of June 15, 1917, and the Acts of Congress amendatory thereof, and by the President delegated to the Fleet Corporation. The Fleet Corporation, under its certificate of incorporation and under the said Shipping Act, 1916, had no power or authority to bind the United States as its representative or agent or otherwise with respect thereto.

Eleventh. Each and all of the contracts hereinafter referred to which were entered into, or signed by, or in the name of, the Fleet Corporation, were made and entered into by said corporation solely by virtue of the power and authority delegated to said Fleet Corporation as an agency of the United States by the President of the United States, under and pursuant to said Act of June 15, 1917, and the Acts amendatory thereof.

LIMITED POWERS OF FLEET CORPORATION

Twelfth. The transactions with the defendant Bethlehem Shipbuilding Corporation, Ltd., herein set forth, involved amounts greatly in excess of $50,000,000 and under said Shipping Act, 1916, Section 13, above quoted, which was in full force and effect during the period in which the shipbuilding contracts herein referred to and the supplements thereto were made, the Fleet Corporation was prohibited from entering into any of said contracts as a principal or in its corporate or individual capacity, and under then existing law could enter into the same only as an agent of its principal the United States of America, complainant herein.

BETHLEHEM STEEL CORPORATION AND SUBSIDIARIES

Thirteenth. The defendant *Bethlehem Steel Corporation* was incorporated under the laws of the State of New Jersey on or about December 10, 1904, as a reorganization of the United States Shipbuilding Company, a corporation then engaged in the building of ships. Said defendant at or about the time of its incorporation acquired the entire capital

stocks (except qualifying shares held by the directors) of the defendants Bethlehem Steel Company, and Union Iron Works, and of the Harlan & Hollingsworth Corporation, Samuel L. Moore Corporation, and of other corporations. Defendant Bethlehem Steel Company then owned and later transferred to the Bethlehem Steel Corporation, which corporation has since continuously owned all the capital stock of defendant Fore River Shipbuilding Corporation and of the Penn-Mary Steel Company. The defendant Bethlehem Steel Corporation assumed control of the corporations above specifically named as of January 1, 1905, and thereafter until the organization of the defendant Bethlehem Shipbuilding Corporation, Ltd., the defendant Bethlehem Steel Corporation operated the business and plants of said corporations above specifically named, and particularly the shipbuilding plants as subsidiaries, and in fact as incorporated departments or divisions of its shipbuilding organization.

SHIPBUILDING PLANTS OWNED AND OPERATED BY DEFENDANT BETHLEHEM STEEL CORPORATION PRIOR TO TRANSACTIONS HEREIN ALLEGED

Fourteenth. The said Penn-Mary Steel Company prior to the transactions hereinafter referred to between the complainant and defendant Bethlehem Shipbuilding Corporation, Ltd., owned, among other things, a large shipbuilding plant at Sparrow's Point, Maryland, which was, after February, 1916, operated by the defendant Bethlehem Steel Company. Prior to February, 1916, said plant had been operated by Maryland Steel Company, a Maryland Corporation, the entire capital stock of which was

owned by Penn-Mary Steel Company, and contracts with other companies owned and controlled by defendant Bethlehem Steel Corporation for the construction of vessels requisitioned as aforesaid had been made by and in the name of said Maryland Steel Company and were in force on August 3, 1917. The said Maryland Steel Company has since been dissolved, and all its assets taken over and liabilities assumed by defendant Bethlehem Steel Company.

The defendant Fore River Shipbuilding Corporation, prior to said transactions, and thereafter, until the acquisition thereof by defendant Bethlehem Shipbuilding Corporation, Ltd., owned a large and fully equipped shipbuilding plant in the State of Massachusetts, which is now owned and operated by defendant Bethlehem Shipbuilding Corporation, Ltd. The defendant Union Iron Works Company then owned, and has since continuously owned, the entire capital stock of Union Iron Works and of Union Iron Works Dry Dock Company, both corporations organized under the laws of the State of California. The defendant Union Iron Works Company during the said period operated (until the operation thereof was taken over by defendant Bethlehem Shipbuilding Corporation, Ltd.,) a shipbuilding plant known as the "Union plant" on the Pacific Coast at or near San Francisco in the State of California.

REQUISITION OF VESSELS UNDER CONSTRUCTION

Fifteenth. On or about August 3, 1917, the complainant, acting through the Fleet Corporation (under the powers delegated to, and conferred upon it by the President of the United States through said Executive order of July 11, 1917, under said act of

June 15, 1917), as a war measure, requisitioned all vessels of over 2,500 tons deadweight capacity then under construction in all shipyards throughout the United States, including such vessels then under construction in the plants and yards of the defendants Fore River Shipbuilding Corporation, Bethlehem Steel Company, and Union Iron Works Company, and of said Harlan & Hollingsworth Corporation, and Samuel L. Moore Corporation, and thereafter entered into contracts with said respective corporations for the completion of the vessels so requisitioned, as more fully hereinafter set forth.

INCORPORATION OF DEFENDANT BETHLEHEM SHIPBUILDING CORPORATION, LTD.

Sixteenth. Thereupon the defendant Bethlehem Steel Corporation, for the purpose of carrying out the said contracts for the completion of the vessels so requisitioned at the aforesaid plants of its said subsidiary and controlled companies, and for other purposes, caused the defendant Bethlehem Shipbuilding Corporation, Ltd., to be organized under the laws of the State of Delaware. Ever since the incorporation of said Bethlehem Shipbuilding Corporation, Ltd., on or about October 15, 1917, and thereafter during the entire period of the transactions herein alleged, and up to the present time, the defendant Bethlehem Steel Corporation has owned all of the stock of the defendant Bethlehem Shipbuilding Corporation, Ltd., (except the qualifying shares held in the names of its directors), and has operated said defendant Bethlehem Shipbuilding Corporation, Ltd., as the principal shipbuilding department of its business and (except in so far as

funds have been provided by the United States Government as hereinafter alleged) has provided all necessary funds for such shipbuilding business and has exercised exclusive control and domination over all its business and affairs so that while organized under the form of a corporation, the said defendant Bethlehem Shipbuilding Corporation, Ltd., is in truth and fact not a separate entity, but an organized department of the defendant Bethlehem Steel Corporation.

NEGOTIATIONS FOR CONTRACTS FOR BUILDING NEW SHIPS

Seventeenth. On or about December 13, 1917, the defendant Bethlehem Shipbuilding Corporation, Ltd. acting for itself and for and on behalf of the defendant Bethlehem Steel Corporation through its officers, agents and other representatives entered into preliminary negotiations with the Fleet Corporation (representing the complainant and acting under authority of said executive order of July 11, 1917) for the construction of other steel vessels required by the Government of the United States and deemed necessary for the prosecution of the war.

MERGER OF OTHER SUBSIDIARIES WITH BETHLEHEM SHIPBUILDING CORPORATION, LTD., AND ACQUISITION OF SPARROWS POINT PLANT

Eighteenth. On or about October 30, 1917, the defendant Bethlehem Steel Corporation, through its control by stock ownership and otherwise of the corporations herein referred to caused the defendant, Bethlehem Shipbuilding Corporation, Ltd., to ac-

quired through corporate merger the properties of said Harlan & Hollingsworth Corporation, including its shipbuilding plant at Wilmington, Delaware, and the properties formerly of Samuel L. Moore & Sons Corporation, including its shipbuilding plant at Elizabethport, New Jersey, except certain contracts then in force between said Samuel L. Moore & Sons Corporation and the United States. The properties of said Samuel L. Moore & Sons Corporation so acquired were by the defendant Bethlehem Steel Corporation caused to be transferred to Moore Shipbuilding Corporation, a corporation organized under the laws of the State of Delaware, and thereafter said defendant Moore Shipbuilding Corporation under the laws of Delaware was merged with the defendant Bethlehem Shipbuilding Corporation Ltd. By such corporate merger the defendant Bethlehem Shipbuilding Corporation, Ltd., assumed all the liabilities of said Harlan and Moore corporations, and particularly their respective contractual obligations for the completion of the ships under construction requisitioned as aforesaid. The defendant Bethlehem Steel Corporation at or about the same time caused the defendant Bethlehem Shipbuilding Corporation, Ltd., to acquire from said Bethlehem Steel Company and Penn-Mary Steel Company the said shipbuilding plant at Sparrows Point, Maryland, and said defendant has since such acquisition continuously operated the same.

LEASE BY BETHLEHEM STEEL CORPORATION OF OTHER PLANTS TO SHIPBUILDING CORPORATION

Nineteenth. On or about November 1, 1917, and pursuant to a plan for entering into contracts with

the complainant for the construction of steel vessels, the defendant Bethlehem Steel Corporation caused the plants of the defendants Fore River Shipbuilding Corporation, and Union Iron Works Company and of said Union Iron Works Dry Dock Company to be leased by said respective companies to the defendant Bethlehem Shipbuilding Corporation, Ltd. From the effective dates of said leases said last-named defendant has operated such leased plants. On or about the same date, the defendant Bethlehem Steel Corporation caused the defendant Bethlehem Shipbuilding Corporation, Ltd., to enter into agreements with defendants Bethlehem Steel Company, Fore River Shipbuilding Corporation and Union Iron Works Company, and Maryland Steel Company, whereby the defendant Bethlehem Shipbuilding Corporation (Ltd.), undertook the performance in the name and in behalf of said corporations, respectively, and of said Maryland Steel Company of all of their outstanding contracts with the Government of the United States, for the construction of vessels requisitioned by said requisition order of August 3, 1917. Thereupon the defendant Bethlehem Shipbuilding Corporation, Ltd., entered into and continued in the performance of said contracts and of contracts made in substitution or modification thereof during the period herein referred to with the consent of the complainant.

EXPERIENCE OF DEFENDANTS IN SHIPBUILDING.

Twentieth. At the time of the organization of the defendant Bethlehem Shipbuilding Corporation, Ltd., and at the time of the making of the contracts for building ships hereinafter referred to between

the complainant and said defendant, the defendants Bethlehem Steel Corporation, Bethlehem Steel Company, Fore River Shipbuilding Corporation and Union Iron Works Company, and the Bethlehem Shipbuilding Corporation, Ltd., through its predecessors, the Samuel L. Moore & Sons Corporation and the Harlan & Hollingsworth Corporation, were all thoroughly familiar from practical experience which had extended over a period of many years, with the cost of building the various standard types of steel vessels which had prior thereto been built by said respective corporations at their respective yards, and each of said shipbuilding corporations then maintained a large, efficient, and well-equipped organization engaged in the building of steel vessels. The greater part, if not all of the steel, fabricated or otherwise, required for such shipbuilding operations had been ~~obtained by said~~ shipbuilding companies from the defendant Bethlehem Steel Company and in truth and fact the various shipbuilding corporations above named including defendant Bethlehem Shipbuilding Corporation, Ltd., were organized, acquired, leased or otherwise came into the control of the defendant Bethlehem Steel Corporation, with the purpose and intent of supplying customers for using steel products of the Bethlehem Steel Company and of absorbing into the general overhead of defendant Bethlehem Steel Corporation the overhead expense of said shipbuilding corporations. At the same time, through all of the stock of the said shipbuilding corporations above named and of the Bethlehem Steel Company, being owned directly or indirectly as herein alleged by defendant Bethlehem Steel Corporation, that defendant became the beneficiary, and ultimate acquirer, of all profits

and other benefits derived from all the shipbuilding contracts herein referred to.

Twenty-first. The defendant Bethlehem Shipbuilding Corporation, Ltd., at the time of, and after its incorporation, took over a large part of the organization and personnel of the said shipbuilding companies merged into it, to wit, Harlan & Hollingsworth and Moore Shipbuilding Corporation and of the shipyards of the other defendant shipbuilding corporations above mentioned, control of which it acquired as above mentioned, by lease, or otherwise, and the organization and personnel of the Sparrows Point plant acquired as aforesaid. Upon its organization, and prior to the entering into of contracts with the complainant hereinafter mentioned, the general basis of organization of the defendant Bethlehem Shipbuilding Corporation, Ltd., was, and continued thereafter to be, substantially as follows: The shipbuilding plant at Wilmington, Delaware, which formerly belonged to Harlan & Hollingsworth Corporation, was operated and known as the Harlan plant. The shipbuilding plant at Elizabethport, New Jersey, which formerly belonged to said Moore Shipbuilding Corporation, was operated and known as the Moore plant. The shipbuilding plant of the Fore River Shipbuilding Corporation at Fore River, Massachusetts, was operated and known as the Fore River plant. The shipbuilding plant at Sparrow's Point, Maryland, was operated and known as the Sparrow's Point plant, and the works on the Pacific Coast formerly operated by the defendant Union Iron Works Company and by the Union Iron Works Drydock Company, were operated and known as the Union plant. By reason of the fact of the aforesaid long experience of the defendants Bethlehem Steel

Company, Fore River Shipbuilding Corporation, and Union Iron Works Company, and of the said Harlan and Moore corporations so merged, in building such vessels, the defendant Bethlehem Shipbuilding Corporation, Ltd., and the defendant Bethlehem Steel Corporation were entirely familiar with, and had special expert knowledge of, the actual and probable cost of building such vessels and of estimating the profits to be derived therefrom. Neither the complainant, nor its said agency the Fleet Corporation, nor the United States Shipping Board, nor any members of the organization of either of said bodies (except, as hereinafter stated, Charles M. Schwab) had any such knowledge or means of acquiring the same.

Complainant further shows that at the time of the making of the false representations herein alleged with regard to the estimated cost of the vessels to be constructed under said contracts, the wages of all labor to be employed on such ship construction had been or were about to be fixed at a standard rate applicable to the shipbuilding industry, as was well known to the said defendants, and the rates of wages so fixed and to be fixed by action of the Government during the war covered specifically every grade and class of workmen to be employed in such ship construction; further, that prior to the negotiations aforesaid and the making of the false representations aforesaid the Government of the United States as a war measure and by agreement of all the principal steel companies, including the defendants Bethlehem Steel Corporation and Bethlehem Steel Company, had fixed the price of steel and of all steel products for use in shipbuilding throughout the United States; that such prices had been fixed in great detail and that there was a well known and

recognized price for all steel for ship construction and such prices were intended to be and were in fact unchanged throughout the period of ship construction herein alleged; further, that the Government of the United States through its control of transportation had fixed transportation costs and controlled all other basic industries entering into the production of ships.

Complainant further shows that the costs of labor and steel constitute by far the largest items of the cost of ship construction and that such costs as well as all other costs entering into the cost of ship construction were well known to the said defendants and could be readily computed and ascertained by them.

The said defendants also knew from such experience the amount and number of hours of labor and amount and cost of material and all other elements of costs entering into the construction of such vessels.

WAR EMERGENCY

Twenty-second. Because of the necessity for constructing the vessels to meet the emergencies and requirements of the war, particularly the enormous loss of vessels caused by the unrestricted submarine warfare undertaken by the German Empire, an extraordinary emergency of the war existed and rendered it necessary for the Government of the United States not only to control the entire shipbuilding, steel, coal, transportation, and other industries of the United States but to enter into contracts with shipbuilders for the construction of as many ves-

sels as it was possible for each shipbuilder to construct, and to have the same constructed in the least possible period of time. These conditions and this emergency were well known to the public in general, and particularly to the defendants herein named.

FALSE REPRESENTATIONS BY DEFENDANTS AS TO ESTIMATED COSTS OF VESSELS

Twenty-third. Under these conditions, the defendant, Bethlehem Shipbuilding Corporation, Ltd., acting through its duly authorized representatives, during the months of October, November, and December, 1917, represented to the complainant, through its agency, the Fleet Corporation, that it was impracticable to estimate within a reasonable percentage what would be the actual cost of constructing vessels similar to those theretofore constructed at the various plants then operated by the Bethlehem Shipbuilding Corporation, Ltd., and proposed that said vessels should be constructed for complainant on a basis of actual cost plus a fixed fee, with an agreed upon probable cost, the shipbuilding corporation to be paid in addition to the fixed fee one-half of any saving that might be made below the estimated cost figure, and with the further provision that the estimated cost figure should be increased due to any increase in rate of wages that might be approved by the Emergency Fleet Corporation. The contracts hereinafter referred to were drawn in accordance with said proposal and the respective amounts stated therein as the estimated actual cost of construction, were represented by the Bethlehem Shipbuilding Corporation, Ltd.,

acting through its said representatives, as fair and reasonable estimates of said cost, based upon the wage scale then in effect and upon existing costs of material, and said corporation refused to undertake said construction if lesser sums were insisted upon by complainant.

Complainant avers that said representations were knowingly false in that the Bethlehem Shipbuilding Corporation, Ltd., as hereinbefore set forth, was in a position to know what would be the approximate cost of constructing said vessels, and the said amounts stated in said contracts were known by the said representatives of said corporation to be very greatly in excess of any costs which could reasonably be anticipated, based upon the wage scale then in effect and the existing costs of material. Complainant avers that said estimates and representations were made for the purpose of enabling the Bethlehem Shipbuilding Corporation, Ltd., to derive excessive, unreasonable and unconscionable profits from said contracts.

The respective amounts named in said contracts were objected to by the duly authorized representatives of the Fleet Corporation, acting upon behalf of the complainant, as being excessive and unreasonable, and said amounts were assented to by said representatives only because of the repeated assurance given by said representatives of the Bethlehem Shipbuilding Corporation, Ltd., that said estimates had been made in good faith, were entirely fair and reasonable, and were the lowest sums for which it would undertake the work in question.

The fixed fees specified in said contracts were based upon the fictitious estimates stated in the re-

spective contracts as the estimated actual cost of construction, and were in all or in substantially all of said contracts, approximately equal to ten per cent of such estimated cost.

Complainant avers that at the time of the execution of said contracts, the Bethlehem Shipbuilding Corporation, Ltd., was in a position to know and had every reason to expect that the sum named in the respective contracts as a fixed fee, would in all probability equal or exceed a fair and reasonable profit for the services to be performed thereunder, and the terms of said contracts relating to the respective amounts of the estimated costs and "half-savings" were insisted upon by said corporation for the purpose of enabling it to derive excessive, unreasonable and unconscionable profits from said contracts.

OBLIGATIONS IMPOSED ON DEFENDANTS BY LAW

Twenty-fourth: The complainant further shows that, under the common law and under the laws of the United States, the duty and obligation were imposed upon the defendant Bethlehem Shipbuilding Corporation, Ltd., so entering into contractual relations with the Government of the United States, to perform each and all of said shipbuilding contracts fairly and honestly at the least practicable expense and in the shortest practicable time, and that whatever provisions might be contained in the said contracts to the contrary notwithstanding, the defendant Bethlehem Shipbuilding Corporation Ltd., was entitled to receive from the United States, complainant herein, only a fair and reasonable profit upon the work done, and that any term, covenant, or provision in any such contract for the payment of

any sum in excess of a fair and reasonable profit upon the fair and reasonable cost of the work was and is void and unenforceable, and the same obligation was imposed upon the defendant Bethlehem Steel Corporation in causing the said contracts to be entered into in its behalf.

OTHER SHIPBUILDERS' PROFITS REDUCED BELOW 10 PER CENT

Twenty-fifth. The complainant further shows that during the period in which the hereinafter specified contracts were entered into the Government of the United States, acting under its constitutional powers during the war, had in other instances fixed and limited the profit to be made by other shipbuilders constructing similar ships under similar circumstances, and in the vicinity of the various shipbuilding plants so operated by the defendants above named, at a sum not to exceed 10% of the actual cost, and in many instances at a sum much less than 10% of actual cost; and the complainant further shows that 10% of the actual cost with respect to contracts for building ships of the type and tonnage of the vessels contracted for as hereinafter alleged is the maximum profit which in fairness and reason, and under the settled principles of law, a shipbuilder under the circumstances herein alleged is entitled to receive from the complainant.

CHARLES M. SCHWAB, DIRECTOR GENERAL OF FLEET CORPORATION

Twenty-sixth. The complainant further shows that on or about the 11th day of April, 1918, and

before the effective date of many of the shipbuilding contracts hereinafter specifically referred to, Charles M. Schwab, at the request of the President of the United States, entered upon the office of Director General of the Fleet Corporation and continued in that office until December 12, 1918. During said period said Charles M. Schwab was vested by the Fleet Corporation with full power and authority to make new contracts for shipbuilding and to modify all then existing contracts for shipbuilding, and to exercise all powers of modification of then existing contracts vested in the President of the United States by the said act of June 15, 1917, and by the President delegated to the Fleet Corporation. The powers so vested in said Director General included the power to require and compel the shipbuilding contractors to modify any then existing contracts by reducing the profits therein covenanted for to a reasonable profit. In the exercise of such power the said Charles M. Schwab, acting as Director General as aforesaid, established with respect to other contractors a policy, in behalf of the United States, of reducing excessive profits under then existing contracts to not over 10% of the actual and reasonable cost of construction, and with respect to other contractors limited the profits in contracts to be made to not over 10% of such cost, and declared that the United States Government would not permit contractors engaged in building ships to obtain excessive prices or profits.

At the time said Charles M. Schwab was so acting as Director General and took the aforesaid action with respect to other shipbuilding contractors he was one of the largest stockholders of the defendant Bethlehem Steel Corporation and was Chairman of

its Board of Directors and held a corresponding position in the formal corporate organization of the defendant Bethlehem Shipbuilding Corporation (Ltd.), and by virtue of his position was in control of the affairs of the defendants Fore River Shipbuilding Corporation, Bethlehem Steel Company, and Union Iron Works Company. During said period Joseph W. Powell was Vice President of defendant Bethlehem Shipbuilding Corporation and, as such, in charge of said contracts and of the performance thereof. During this same period said Charles M. Schwab, while acting as Director General of the Fleet Corporation as aforesaid, took no official action with regard to the herein specified shipbuilding contracts, and refrained from at any time questioning the aforesaid provisions in said construction contracts with respect to the fixed fee for profit and also with respect to the sharing, as aforesaid, of the difference between the fictitious estimated cost and the actual cost, and suffered and permitted the said contracts to remain in full force and effect and new contracts of like tenor and effect to be entered into between complainant and Bethlehem Shipbuilding Corporation (Ltd.), and payments to be made thereunder, to all intents and purposes as if the same constituted valid and binding obligations of the United States.

DUAL RELATIONS OF CHARLES M. SCHWAB

Twenty-seventh. During the period aforesaid said Charles M. Schwab was placed by the Trustees of the Fleet Corporation in a position of power and authority over all contracts for ship construction, under which he had the right and power to

discharge and remove any subordinate official of the Fleet Corporation who did not carry out his commands, and was in a position of practical domination over the various officials of the Fleet Corporation charged with the duty of preparing and executing the shipbuilding contracts hereinafter mentioned. At the same time the said Charles M. Schwab, through his office as Chairman of the Board of Directors of the defendants Bethlehem Steel Corporation and Bethlehem Shipbuilding Corporation, Ltd., his large holdings of stock in the former and his dominating position in both corporations as well as in the defendants Bethlehem Steel Company, Fore River Shipbuilding Corporation, and Union Iron Works Company, had the power and authority to direct the terms on which the said contracts should be entered into by and in the name of the defendant Bethlehem Shipbuilding Corporation, Ltd. During the said period and throughout the period of construction the same individuals constituted a majority of the board of directors of each of the defendants, and the principal executive officers of each defendant were the same individuals. There was a complete interlocking directorate and centralized control in the hands of defendant Bethlehem Steel Corporation.

Power of Fleet Corporation to Modify Contracts.

Twenty-eighth. The complainant further shows that during the said period while said Charles M. Schwab was Director General the Fleet Corporation, under the powers delegated to it by said Executive Order of July 11, 1917, and thereafter by the order of December 3, 1918, and under the terms

of the Emergency Shipping Fund Provisions of the said Act of June 15, 1917, had the power to modify, suspend, and cancel each and all of the said shipbuilding contracts and thereby to require the contracting shipbuilder to consent to a reduction of the amounts thereby agreed upon for profits and half savings as aforesaid and to reduce the profits thereby covenanted to be paid to a fair, reasonable amount.

Twenty-ninth. Complainant further shows that the contracts for building new ships (as distinguished from ships requisitioned under construction) hereinabove alleged were known and designated by the following numbers and provided for the construction of ships in number and type as follows:

Contract No.	Number of ships	Type	Deadweight each	Shipyard	Dated back to—
177 S. C.	12	Steel tank	10,100	Union	1917 Dec. 31
	3	do	7,500		
178 S. C.	3	Steel cargo	7,400	Harlan	Do.
179 S. C.	3	do	10,100	Sparrows Point	Do.
182 S. C.	2	Troop ships (steel)		do	Do.
183 S. C.	3	Steel tank	9,100	Fore River	Do.
184 S. C.	6	Tug boats		Moore	Do.
184 S. C. supplemental	14	do		do	
191 S. C.	4	Steel cargo	2 of 11,800 1 of 11,700 1 of 12,000	Union	Do.
196 S. C.	1	do	7,400	Sparrows Point	Do.
	4	Steel tank	10,100	do	1918
226 S. C.	3	Steel cargo	7,400		Mar. 18
230 S. C.	2	do	11,800	Union	Apr. 22
299 S. C.	3	Steel tank	9,100	Fore River	Apr. 30
300 S. C.	3	do	10,100	Sparrows Point	Do.
301 S. C.	6	do	10,100	Union	Do.
	16	Steel cargo	11,800		
312 S. C.	23	do	7,400	Sparrows Point	May 15
313 S. C.	[2]10	Tugboats		Moore	Do.
314 S. C.	3	Steel tank	7,500	Harlan[3]	Do.
	7	Steel cargo	5,100	do	
340 S. C.	[2]20	Troopships		Union	June 21
465 S. C.	16	do		Sparrows Point	July 15

[2] 3 canceled.

[3] All canceled.

The nominal dates of each of said contracts do not represent the effective dates thereof, which in every case were later than the nominal date.

Thirtieth. The terms and provisions of said contracts above specified which related to the basis for ascertaining the cost were substantially the same and the actual cost was thus defined by Article 17 of said contracts as follows:

XVII

For the purposes of this contract, actual cost of the construction of the vessels shall include the following, and items similar thereto in principle:

(a) The net costs, after deducting all discounts obtained, of labor (including compensation of labor by way of bonuses), and materials, machinery, equipment, and supplies furnished by the Contractor and entering into or expended in the manufacture, building, or construction of the vessels, and other direct charges, such as insurance on the vessels, etc.

(b) A proper proportion of running expenses, including ordinary rentals, cost of ordinary repairs, and maintenance, light, heat, power, insurance, management, salaries (including compensation by way of bonuses), and other indirect charges, all as incurred on account of the vessels constructed under this contract.

(c) A proper proportion of interest accrued within the taxable year on bonds or other debts or loans existing contracted for prior to the date of this contract and the proceeds of which shall

be used or shall have been or shall be invested in plant, equipment, etc., that shall be used in the performance of the work under this contract.

(d) A proper proportion of taxes of all kinds accrued during the taxable year with respect to the business or property, except any Federal taxes.

(e) A proper proportion of physical losses actually sustained within the taxable year in connection with the construction of the vessels under this contract, including losses from fire, flood, storm, riot, vandalism, any acts of God, acts of war, or other casualties, and not compensated for by insurance or otherwise.

(f) A reasonable allowance, according to the condition, for depreciation of values of the property and plant of the Contractor used in connection with the work under this contract. In the event of any dispute as to the amount to be allowed it shall be determined by arbitration in the manner provided for in Article XX.

Thirty-first. The terms and provisions of said contracts by which the price to be paid for each of the vessels to be constructed thereunder are substantially similar. The terms of said contracts relating to price and fixed fee for profit and to the "Half Savings Clause" are contained in Article XIX.

In each of the contracts for ships to be built at yards on the East Coast, Article XIX reads substantially (*mutatis mutandis*) as does Article XIX of Contract 178 S. C., to wit:

XIX

The price to be paid for each vessel to be constructed and furnished in accordance with the terms of this contract, including authorized changes therein as herein provided, shall be the actual cost, plus the definite sum for profit hereinafter in this Article provided for, based upon an estimated actual cost to the Contractor, at the wage schedule as adopted by the Federal Adjustment Wage Board, and in force on January 3, 1918, at the Navy Yard of the United States at Philadelphia, Pennsylvania, of one million six hundred and twelve thousand dollars ($1,612,000) for each of said tank vessels, and of one million three hundred and fifty thousand dollars ($1,350,000) for each of said cargo vessels. Should the rate of wages actually paid by the Contractor be increased or decreased by the direction of, or with the approval of, the Owner from those of the schedule aforesaid, said estimated cost shall be increased or decreased by the amount that such increase or decrease of wages increases or decreases the relative labor cost over those that would be incurred were the aforesaid schedule in force during the whole period of the construction of the vessel. The estimated cost shall also be increased or diminished by the net cost of any changes in plans or specifications made by the authority of the Owner. Should the actual cost of any tank vessel in the execution of the work reach or exceed the sum of one million six hundred and twelve thousand dollars ($1,612,000), or of any cargo vessel in the execution of the work reach or exceed the sum of one million three hundred and fifty thousand dollars ($1,-

350,000), or such revised estimated cost in lieu thereof in any case as shall be determined in accordance with the foregoing provision, the Contractor shall be paid the fixed sum for profit of one hundred and sixty thousand dollars ($160,000) for such tank vessel, and one hundred and twenty-five thousand dollars ($125,000) for such cargo vessel. Should the actual cost be less than the estimated revised cost as aforesaid for increase of wages and cost of changes, the Contractor shall be allowed as profit on each vessel in addition to said fixed sums for profit of One hundred and sixty thousand dollars ($160,000) and one hundred and twenty-five thousand dollars ($125,000), respectively, one-half the amount by which such actual cost of each vessel falls short of the estimated cost revised as aforesaid.

Said fixed sums for profit of one hundred and sixty thousand dollars ($160,000) and one hundred and twenty-five thousand dollars ($125,000), respectively, shall be paid as follows:

To the total amount of the approved monthly bills of actual cost of the vessels there shall be added and paid ten per cent (10%) thereof as part payment on account of said profit, such payments of said ten per cent (10%) to be continued until ninety per cent (90%) of the entire amount of said fixed sums for profit shall have been paid to the Contractor. Thereafter, further payments on account of said fixed sums for profit shall not be required until the vessel in respect of which such sums shall be payable shall have been completed, delivered, and accepted by the Owner. On the completion, a

complete audit of the total of the cost of said vessel or vessels shall be made, together with a determination of the revised estimated cost as hereinbefore provided, and thereupon the balance of said fixed sums for profit and any additional profit over and above said sums of one hundred and sixty thousand dollars ($160,000) and one hundred and twenty-five thousand dollars ($125,000), respectively, determined as hereinbefore provided, shall become immediately due and payable.

Article XIX in each of the contracts for ships to be built at yards on the West Coast is substantially identical except that the phrase "In force ——— at said shipyard of the contractor", or an equivalent phrase, is used in place of the phrase used in the East Coast contracts, "In force ——— at the Navy Yard of the United States at" (Boston, Brooklyn, Norfolk, Philadelphia as the case may be).

CONTRACTS No. 465 AND No. 182

Thirty-second. Complainant further shows that contract No. 465, S. C., in the covenants therein contained relating to profits and savings, differed from the others in that it provided that the amount of the "one-half of the savings" to be paid to the shipbuilder should not exceed $200,000.

Contract No. 182 differed from the others by providing that the shipbuilder should be paid the actual cost of construction computed as above set forth in the thirty-third paragraph of this bill plus a fixed profit of 10% of said cost, without any half-savings clause. Complainant alleges that with re-

spect to said two contracts the Bethlehem Shipbuilding Corporation, Ltd., is entitled only to a fair and reasonable profit upon the reasonable and proper cost, and that the provision for "half-savings" in contract No. 465, S. C., is unconscionable, void, and unenforceable in like manner as with respect to the other contracts above specified.

The vessels to be built under said contracts 465 S. C. and 182 S. C. were of a different type from those theretofore built by any one of said shipbuilding corporations at the Sparrows Point shipyard or elsewhere. They at first were intended to be transports, but after the Armistice they were changed to passenger and cargo vessels.

BASIS OF COMPUTATION OF HALF SAVINGS IN CERTAIN CONTRACTS VOID FOR UNCERTAINTY

Thirty-third. Complainant further shows that with respect to contracts numbers 178 S. C., 179 S. C., 183 S. C., 184 S. C., 184 S. C. Supplemental, 196 S. C., 226 S. C., 299 S. C., 300 S. C., 312 S. C., 313 S. C., 314 S. C., 465 S. C., the estimated actual cost under Article XIX is incapable of computation in that it is stated to be—

> at the wage schedule as adopted by the Federal Adjustment Wage Board and in force on January 3, 1918, at the Navy Yard of the United States at (Boston, Brooklyn, Norfolk, Philadelphia, as the case may be)—

as will more fully appear by reference to the original of each of said contracts when produced upon the trial. At the time of the making and delivery of said contracts and thereafter there was in fact

no wage schedule adopted by the Federal Adjustment Wage Board in force at any one of the Navy Yards specified in the respective contracts. By reason thereof complainant shows that the "half savings clause" in each of said contracts is void for uncertainty as well as for the reasons hereinabove specifically alleged.

AMOUNTS PAID AND RECEIVED ON ACCOUNT OF HALF SAVINGS HEREIN SOUGHT TO BE RECOVERED.

Thirty-fourth. Complainant further shows that in the course of the construction of said vessels the defendant Bethlehem Shipbuilding Corporation, Ltd., from time to time requested payment of amounts of money claimed to be due on account of the said half-savings clause in the contracts referred to, and that thereupon from time to time payments were made under mistakes of law without warrant of law and under erroneous construction of the respective contracts, by the disbursing officers of the Fleet Corporation of moneys of the complainant, and such payments were applied by said defendant on account of moneys claimed by it to be due and payable under said half-savings clauses of said contracts.

SCHEDULE OF HALF SAVINGS ATTACHED

Thirty-fifth. Annexed hereto as a part of this bill is a schedule marked "Exhibit A", showing in detail, with respect to each of the contracts therein specified, the approximate amounts paid to defendant Bethlehem Shipbuilding Corporation, Ltd., as aforesaid on account of "Half savings", amount-

ing in the aggregate to approximately $9,014,633.05. The exact amount thereof can be determined only by means of the discovery and accounting herein prayed for.

SCHEDULE ATTACHED OF FIXED FEES FOR PROFITS AND PROPER BASIS FOR COMPUTATION OF PROFITS

Thirty-sixth. Annexed hereto as a part of this bill is a schedule, marked "Exhibit B", showing in detail with respect to each of the contracts therein specified the following particulars:

(1) Relative to "Construction Cost".

(a) "Contract number"; (b) "Maximum adjusted actual cost"; (c) "Surplus material to be added to adjusted actual cost"; (d) "Maximum actual cost to be credited to shipbuilder"; (e) "Paid to shipbuilder account of actual cost"; (f) "Recoverable overpayment to shipbuilder on actual cost".

(2) Relative to "Fixed fees for profit".

(g) "Fees for profit as fixed in contracts"; (h) "Paid to shipbuilder as fixed fees for profits"; (i) "Maximum profits allowable to shipbuilder (10% of adjusted cost)"; (j) "Recoverable overpayments to shipbuilder for profits on basis of allowance of 10% for profit".

Complainant does not concede that defendant Bethlehem Shipbuilding Corporation, Ltd., is entitled to as much as 10% upon actual cost as a fair and reasonable profit, but, as more fully elsewhere herein set forth, contends that such profit should be fixed by the court after hearing the evidence.

The computation in said schedule is made up on the basis stated only for convenience of illustration. In said schedule the items of "Maximum adjusted actual cost" are made up on the basis as stated in Article XVII of the contracts, but without concession as to the propriety thereof. The amounts stated as "Recoverable overpayment to shipbuilder on actual cost" are the difference between actual cost computed as above stated and amounts paid to said defendant, but complainant does not concede that these are the only amounts recoverable on that account and alleges that the amounts recoverable so stated in said Exhibit B are subject to being increased when the court shall have determined upon the evidence the fair, reasonable, and proper cost of said vessels, and the fair, reasonable, and proper amount to be allowed as profit thereon.

With respect to the ten per cent for profit, complainant further shows that certain of the items specified in Article XVII of said contracts quoted in Article Thirty-third of this bill, to wit, fixed charges, taxes, losses, and depreciation, are not items of a class with respect to which, in fairness and reason, a profit should be computed, and that in equity profit should be computed only with respect to actual cost exclusive of items of the classes last specified.

MONEYS ADVANCED WITHOUT WARRANT OF LAW AND UNDER MISTAKE OF LAW FOR PERMANENT BETTERMENT OF SHIPBUILDING PLANTS

Thirty-seventh. Complainant further shows that in addition to the sums hereinabove alleged there was advanced by the Fleet Corporation, as agent as

aforesaid, the sum of $4,832,212.51, or thereabouts, moneys of the United States, and said amount was received by the said defendant Bethlehem Shipbuilding Corporation, Ltd., to its use, and the greater part thereof expended in and about the permanent betterment and improvement of the plants owned or operated by it and herein referred to as the Alameda, Sparrows Point, and Harlan plants, respectively, and upon an office building at South Bethlehem, Pennsylvania. The detail of the moneys so advanced and expended upon the said shipbuilding plants and office building is stated in a schedule hereto annexed, made a part hereof and marked "Exhibit C". The said moneys were all (except the moneys advanced for said office building) advanced under provisions in the contracts enumerated in said exhibit which are substantially identical with the 28th Article of Contract 177, which reads as follows:

XXVIII

In order to provide the Contractor with two additional slip-ways, with the necessary cranes and other appliances, additional wharves, buildings, including shop and office buildings, compressor plant, tools, and other equipment (hereinafter referred to as the special improvements, tools, and equipment), all of which are necessary to construct the vessels under this contract, the Owner agrees to deposit with a depositary or depositaries, designated by the Contractor and approved by the Owner, from time to time as requested by the Contractor, up to the sum of One Million Dollars ($1,000,000). The amounts so deposited shall be used to pay the cost of the special improvements, tools, and

equipment, including cost of labor, cost of superintendence, and other charges in connection therewith. Such sums shall be used only for said purposes and they shall be drawn upon only by drafts signed by the Contractor and countersigned by the Owner's duly authorized representative. Such drafts will be countersigned only upon receipt of and in accordance with vouchers signed by the Contractor and approved in form and substance by the duly authorized representatives of the Owner. The title to such deposit and interest thereon shall be and remain in the Owner until withdrawn as aforesaid, and upon final completion of this contract or upon default of the Contractor hereunder the Owner may withdraw without the signature of the Contractor any balance on hand in any bank account established under this Article. The special improvements, tools, and equipment shall continue to be the property of the Owner until they shall have been purchased by the Contractor or abandoned by the Owner as hereinafter provided.

Upon the completion of the said twelve (12) vessels the value of the special improvements, tools, and equipment shall be agreed upon between the parties hereto. In case the parties hereto shall be unable to agree as to the value thereof, it shall be determined in accordance with the provisions of Article XX hereof. The value of the special improvements, tools, and equipment shall be agreed or determined and listed separately. In determining said value there shall be taken into account the original cost as shown by the vouchers delivered as

aforesaid, the cost in a normal material and labor market, all circumstances, such as the use made of the special improvements, tools, and equipment during the life of this contract, the conditions of the shipbuilding business generally, the amount of depreciation therein due to wear and tear, and the replacement value at market prices at that time. Such value having been agreed upon or determined as aforesaid, the Contractor within thirty (30) days thereafter shall elect whether it shall purchase and pay for the special improvements, tools, and equipment, or any part thereof as may be agreed upon, and shall give the Owner notice thereof in writing. In case it shall elect to purchase said property or any part thereof, it shall pay the value thereof as agreed or determined as aforesaid within thirty (30) days thereafter; and upon payment therefor in full the Owner agrees to execute and deliver to the Contractor one or more bills of sale, deeds, or other instruments as shall be necessary in order to convey to the Contractor the Owner's interest in the property so purchased and to discharge or cancel of record any instrument that the Owner shall have theretofore recorded. If the Contractor shall elect not to purchase the special improvements, tools, and equipment, or any part thereof, then the Owner shall have the right to enter upon Contractor's works and remove the same. Any damage done in the removal of said property shall be made good by the Owner. If within one hundred and twenty (120) days from date of notice given to it by the Contractor that it has elected not to purchase any of said property, the Owner shall

not have begun the removal thereof, then the Owner shall be deemed to have abandoned said property and thereupon it shall become the property of the Contractor. If the Owner shall begin removal, the work of removal shall be continued with the utmost vigor and dispatch until completed. If the Owner shall not so prosecute such work of removal, then the Contractor may complete such removal at the risk and expense of the Owner.

In so far as possible, the Contractor agrees to mark the special improvements, tools, and equipment with signs indicating that such property is that of the United States of America represented by the United States Shipping Board Emergency Fleet Corporation. The Contractor further agrees if requested by the Owner, to execute and deliver to the Owner for recordation by it such deeds or other instruments as shall vest and continue in the Owner the title in or to such property, provided it shall be legally possible under the laws of the State of California.

Thirty-eighth. Complainant further shows that the terms and provisions of said contracts above referred to are improvident, unreasonable and unconscionable in the following respects: The moneys so advanced were in fact expended by the defendant Bethlehem Shipbuilding Corporation, Ltd., for the greater part in making permanent and beneficial improvements in and about the said plants. Such improvements included the dredging of channels, the erection of piers and shipways of concrete, and other permanent structures, none of which had or have any salvage value and none of which are

capable of removal, so that the terms and provisions in the said contracts contained whereby, under certain circumstances, the complainant was given the right to remove the same are unconscionable and of no beñefit whatever to the complainant. On the other hand, complainant avers and shows that the said improvements have been and are of great value to the defendant Bethlehem Shipbuilding Corporation, Ltd., and hence to defendant Bethlehem Steel Corporation, and that the same have been, since the completion of the vessels under the contracts herein alleged, and now are, in constant use by the defendant Bethlehem Shipbuilding Corporation, Ltd., and Bethlehem Steel Corporation in their private shipbuilding work. With respect to all such expenditures the amounts of moneys of the United States so advanced constituted a gift to the said defendants of the amount so expended, paid wthout warrant of law, under a mistake of law.

Complainant further shows that the terms and provisions relating to such advances, whereby the defendant, Bethlehem Shipbuilding Corporation, Ltd., is given the option of paying the agreed value of the special improvements, tools, and equipment does not impose upon the defendant Bethlehem Shipbuilding Corporation, Ltd., any obligation to pay the complainant therefor.

Complainant further shows that the right which the said contracts purport to give to the complainant, or its agent the Fleet Corporation, to enter upon the works and remove the same, is of no benefit or advantage to the complainant, because the improvements which were made with the said moneys are in their nature, as above stated, either incapable of removal or incapable of removal without de-

struction and without any value, if and when removed, and that the cost of removing the same would, and does, greatly exceed any value which the same might have.

Thirty-ninth. Complainant further shows that there has been no appraisal made of the value of such tools and improvements; that the parties have never been able to agree upon any basis for the adjustment of the complainant's claim with respect to the amount so advanced; that offers of compromise have been made from time to time, under which, but subject to conditions not agreed to by the complainant, defendant Bethlehem Shipbuilding Corporation, Ltd., has offered to pay therefor upward of $1,349,000; that the amount which the defendant Bethlehem Shipbuilding Corporation, Ltd., should be required to pay to complainant is only determinable by suit in equity, and that the value of the same should be determined and the amount due therefor by defendants Bethlehem Shipbuilding Corporation, Ltd., and Bethlehem Steel Corporation, ascertained by this court in this suit, upon the evidence to be introduced at the trial.

OVERTIME COEFFICIENT OVERPAYMENTS IN CONNECTION WITH REQUISITIONED SHIPS

Fortieth. After the issuance and service upon the defendants Bethlehem Steel Company, Fore River Shipbuilding Company, Union Iron Works Company, and upon Harlan & Hollingsworth Corporation, and Samuel L. Moore & Sons Corporation of the requisition orders of August 3, 1917, hereinbefore set forth, and on or about August 22, 1917, the complainant, under the authority of the said Act of

June 15, 1917, through its agency, the Fleet Corporation, ordered the said respective shipbuilding corporations to complete the ships under construction at their respective yards so requisitioned, upon substantially the same plans and specifications as were provided in the construction contracts between said respective shipbuilding corporations and the purchasers or former owners of the respective ships under construction. These orders were accepted by the respective shipbuilding corporations and subsequently accepted and adopted by the defendant Bethlehem Shipbuilding Corporation, Ltd., either as their agent or successor as aforesaid, and the construction of said requisitioned ships was thereupon proceeded with and the ships completed and delivered.

Forty-first. A statement of the ships under construction so requisitioned at the respective yards on August 3, 1917, including those the completion of which was so undertaken by the Bethlehem Shipbuilding Corporation, Ltd., is hereto attached, made a part hereof, and marked "Exhibit D". This exhibit shows the maximum credits earned by the defendants on account of constructing the requisitioned vessels; the amounts paid to the defendants for such construction; and the amounts representing the minimum that should be recovered by the complainant on account of overpayments to the defendants.

Forty-second. Complainant further shows that prior to the war and prior to the said requisition order of August 3, 1917, the customary hours of labor at the said respective shipyards at which the ships under construction were so requisitioned had been from nine and one-half to ten hours per day.

The contracts under which the said ships were being constructed for private purchasers, or former owners (except three), were on the lump-sum basis and not on the basis of cost plus a percentage for profit; nor were the respective shipbuilding corporations entitled, under such contracts, to additional compensation for overtime work on such construction. In many instances, however, the said shipbuilding corporations, with the purpose and intent and with the result of increasing their profits under contracts with private purchasers, had employed the men overtime and had paid the customary overtime bonus and thereby had advanced the date of completion and delivery of ships so under construction.

Forty-third. Complainant further shows that during the war the Government of the United States, in furtherance of the war shipbuilding program, directed that, with respect to all shipbuilding work carried on for the Government, eight hours per day should constitute the normal time of employment of labor, and that for all labor employed over eight hours in any day, a bonus of 50% per hour should be paid on the East Coast and a bonus at times of 50% and at other times of 100% should be paid on the West Coast, and that all work on Saturday afternoons, Sundays, and holidays should be deemed to be overtime and that with respect thereto a bonus of 100% per hour should be paid. The basis of compensation for such overtime is commonly known as "time and a half" and "double time", according as the bonus is 50 or 100%. The Government had also, through the Shipbuilding Labor Adjustment Board, fixed and adopted a scale of wages for all labor employed in and about all Government shipbuilding contracts.

Forty-fourth. After the date of the requisition of the ships under construction by the defendants Bethlehem Steel Company, Fore River Shipbuilding Corporation, and Union Iron Works Company for private purchasers and before the completion of said requisitioned ships was undertaken by the defendant Bethlehem Shipbuilding Corporation, Ltd., agreements were entered into between the complainant and defendants Bethlehem Steel Company, Fore River Shipbuilding Corporation, and Union Iron Works Company, respectively, for the completion of the said vessels. Subsequently and in or about the months of October and November, 1917, the said defendants, respectively, entered into agreements with the defendant Bethlehem Shipbuilding Corporation, Ltd., under which the defendant last named undertook and agreed as agent for said respective corporations to continue the completion of said vessels under the contracts then in force, but to complete the same and continue the performance of the said contracts in the name of and in behalf of the said respective defendant corporations. All the payments herein set forth, made by the complainant to the defendant Bethlehem Shipbuilding Corporation, Ltd., with respect to the overtime coefficient were made to said defendant as agent for said defendants Bethlehem Steel Company, Fore River Shipbuilding Corporation, and Union Iron Works, respectively.

The said Samuel L. Moore & Sons Corporation made a similar agency agreement with the said Moore Shipbuilding Corporation. Upon the merger of said Moore Shipbuilding Corporation and Harlan & Hollingsworth Corporation with defendant Bethlehem Shipbuilding Corporation, Ltd., as herein

alleged, all the assets and liabilities of both the said corporations, including the performance of all executory contracts, were taken over by defendant Bethlehem Shipbuilding Corporation, Ltd., which thereby became obligated to complete the aforesaid contracts on behalf of the said Samuel L. Moore & Sons Corporation, and to complete all contracts to which the Harlan & Hollingsworth was a party. Thereafter and prior to the institution of this suit, the defendant Bethlehem Steel Corporation caused the said Samuel L. Moore & Sons Corporation to be dissolved, and thereupon all its contractual obligations, including those relating to said requisitioned ships, were undertaken by the defendant Bethlehem Shipbuilding Corporation, Ltd. The amount of moneys of the United States so paid in behalf of complainant by the disbursing officers of the Fleet Corporation representing overtime coefficient, under mistake of law and without warrant of law, and attributable to the contracts for the completion of vessels, made between the complainant and said respective defendant shipbuilding corporations is set out in detail in a schedule hereto annexed, made a part of this bill and marked "Exhibit E".

Forty-fifth. Complainant further shows that during the period of construction and completion of said requisitioned ships, the respective shipbuilding corporations, and in particular the defendant Bethlehem Shipbuilding Corporation, Ltd., employed the men overtime, but such overtime in excess of eight hours per day did not (except in occasional and rare instances) exceed the normal and customary period of from nine and one-half to ten hours in force prior to the war.

Forty-sixth. Complainant further shows that with respect to such overtime, the defendant Bethlehem Shipbuilding Corporation, Ltd., included as part of the additional cost of labor in the statements rendered to the complainant, an amount herein designated for convenience of reference as the "overtime coefficient". Such overtime coefficient was based upon the unwarranted assumption that by employing labor overtime to the extent and in the manner herein set forth, the overhead of the shipbuilder was increased and the efficiency of the labor decreased. By means of a formula adopted by the respective shipbuilding corporations, three separate coefficients were applied to overtime, such coefficients applying respectively to weekday overtime, for which the workman received time and a half, to weekday overtime for which the workman received double time, and for Sunday and holiday overtime, for which the workman received double time. For purposes of illustration the coefficient known as "2.625", applying to weekday overtime for which the workman received time and a half, is set forth herein to show the effect of such coefficient applied to two hours overtime, this effect being to secure to the said shipbuilding corporations a return of $2.625 for every dollar paid to the workman as overtime bonus. These figures were arrived at on the following basis—the computation for convenience being reduced to units of a dollar:

Shipbuilder pays workmen for overtime of two hours:

(a) Included in his lump-sum price at rate of $1.00 per hour $2.00

(b) Charged to complainant as overtime bonus for two hours at 50% of nor-

mal rate	1.00
Total paid by shipbuilder to workmen for overtime and bonus	$3.00

Shipbuilder receives, under labor coefficient 2.625, the following:

(1) Overtime bonus, as above	$1.00
(2) Alleged loss in workmen's efficiency 37.5% of normal rate of $1.00 an hour for two hours	.75
Total of factors (1) and (2)	$1.75
(3) For alleged increase in overhead cost and decrease in overhead efficiency 50% of item No. 1 above plus 50% of item No. 2 above	.875
Total charged by shipbuilder to complainant for each two hours' overtime	$2.625

Total cost paid by shipbuilder as above, for two hours' work	$3.00
Total charged by shipbuilder to complainant for same	2.625
Net cost to shipbuilder for two hours' work	.375

On weekdays for which time and a half was paid the defendant Bethlehem Shipbuilding Corporation, Ltd., or the aforesaid corporations for which the said Bethlehem Shipbuilding Corporation, Ltd., completed the requisitioned ships, charged for and received $2.625 for every dollar of overtime bonus

paid to the workmen. With respect to labor performed on Sundays and holidays the overtime coefficient upon the amount paid as bonus for overtime, namely 100% of the normal rate, was 1.25; and all bonus paid for labor on Sundays and holidays was, in the statements of account rendered by the defendant Bethlehem Shipbuilding Corporation, Ltd., charged with respect to the overtime coefficient at 1.25 times the amount paid as bonus.

Forty-seventh. Complainant further shows that, in truth and in fact, the respective defendant shipbuilding corporations and more particularly the Bethlehem Shipbuilding Corporation, Ltd., did not incur any substantial increase in overhead by reason of the overtime work aforesaid. The efficiency of the labor was not thereby decreased and the hours during which the individual laborers were employed were not increased beyond the hours which had been customary in the shipbuilding industry prior to the war. The efficiency of the individual laborers during the period of their overtime employment was no less than the efficiency during the eight hours of their regular employment, or during the aforesaid period prior to the war, nor was their efficiency during the eight hours of their regular employment decreased by the fact of their working overtime.

Forty-eighth. Complainant further shows that from time to time the respective defendant shipbuilding corporations, and more particularly the defendant Bethlehem Shipbuilding Corporation, Ltd., included in their statements rendered for compensation for overtime work and expense of labor incurred in and about the completion of said requisitioned ships, items representing labor coefficient computed on the basis hereinabove set forth, and

such items were paid by the disbursing officers, under mistakes of law, without warrant of law, and without any authority granted by the complainant. The total amount of moneys so paid by the complainant to said defendant on account of labor coefficient is approximately $942,956.16, and is shown, as approximated with respect to the several defendants therein named in a schedule annexed, made a part of this bill, and marked "Exhibit E".

The exact amount, however, of said payments can only be ascertained by the discovery and accounting herein prayed for, and the total amount herein alleged is tentative and approximate, and subject to adjustment and liquidation upon the facts being fully disclosed by discovery and accounting.

INTEREST ON MONEYS OF THE UNITED STATES ADVANCED BEYOND CONTRACTUAL REQUIREMENTS

Forty-ninth. Complainant further shows that there was no provision in any of the said contracts, either those for the completion of ships requisitioned, or for the building of new ships, whereby complainant was required to advance any moneys to the defendant Bethlehem Shipbuilding Corporation, Ltd., as distinguished from reimbursing said defendant for construction payments actually made under the terms of said contracts. Nevertheless, on or about the 19th day of April, 1918, at the request of the said defendant, the disbursing officers of the Fleet Corporation, without warrant of law under a mistake of law, and in disregard of the contractual obligations of the United States, and of said defendant advanced to said defendant the sum of Three Million Dollars ($3,000,000.00), and on or about

June 12, 1918, the further sum of Five Million Dollars ($5,000,000.00). The said funds amounting to Eight Million Dollars ($8,000,000.00) were deposited by said defendant in a general account, mingled with other funds and used as working capital, not only in connection with the shipbuilding contracts herein referred to but in connection with other shipbuilding contracts. It appears from statements furnished by the said defendant that the bank in which said fund of Eight Million Dollars was deposited allowed interest thereon and that such bank interest is now held by said defendant.

The date and amount of repayment on account of said $8,000,000, so far as repaid, is unknown to complainant, but complainant alleges that such partial repayment was in the form of credits to the complainant of various amounts from time to time with respect to final and other payments claimed to be due defendant Bethlehem Shipbuilding Corporation, Ltd., under certain construction contracts and certain contracts for the completion of requisitioned ships. Complainant alleges and claims that at the time such credit was given the said defendant had been greatly overpaid and that in truth and in fact only a small part, if any, of said advance of $8,000,000 has been repaid and that substantially the whole amount thereof is now due and owing, with legal interest. Complainant further alleges and claims that it is entitled to recover the bank interest so allowed and, in addition, the difference between the same and legal interest at six per cent on the said sum of eight million dollars from the date of the advance and loan thereof to the date of repayment of so much as has been repaid and to the unpaid balance thereof with interest thereon from the

date of advance, the same to be ascertained by the discovery and accounting herein prayed for. Complainant further shows that both of the said advances, amounting to Eight Million Dollars, were made during the period while the defendant Charles M. Schwab was Director General of the Fleet Corporation and exercising control and domination, and standing and in the dual relation, hereinbefore set forth, and that he suffered and permitted said unlawful advances to be made without in any way attempting to protect the interests of the United States to him entrusted.

OTHER OVERPAYMENTS

Fiftieth. Complainant further shows that, in the course of constructing ships under the contracts specified in Article thirty-second of this bill, the defendant Bethlehem Shipbuilding Corporation, Ltd., has represented to be due, and has collected and received from the complainant, and the disbursing officers of the Fleet Corporation have paid to said defendant, without warrant of law, under mistake of law and under erroneous construction of said contracts, other amounts in excess of the amounts due and payable under said contracts. The exact amounts of such excess payments is unknown to complainant, and can not be ascertained save through the discovery and accounting hereby prayed for. Attached hereto as a part of this bill is a schedule marked "Exhibit F" showing the approximate amounts above referred to, which amounts are subject to correction upon discovery and accounting.

CONTROVERSIES BETWEEN THE PARTIES

Fifty-first. Complainant further shows that disputes and controversies have arisen between the complainant and the defendant Bethlehem Shipbuilding Corporation, Ltd., and Bethlehem Steel Corporation as to the proper construction, effect, and validity in law of the terms and provisions of the contracts specified in Article thirty-second hereof and particularly of Articles XVII and XIX thereof, and statements of accounts have been prepared and submitted by and in behalf of said defendants. That many items contained in such statements are agreed to by complainant as proper charges or credits, as the case may be. That many other items are not agreed to, either in amount or in principle, and with respect thereto the propriety of debiting and crediting the same, as the case may be, must be determined by the court upon the issues herein tendered.

APPROXIMATE AMOUNT INVOLVED

Fifty-second. Complainant further shows that the aggregate amount of moneys of the United States unlawfully received by the defendant Bethlehem Shipbuilding Corporation, Ltd., and paid without warrant of law, under mistakes of law, and otherwise, as herein alleged, after the allowance of all proper credits, is upwards of Eleven Million Dollars and that a large part thereof has been received and is now held by the defendants Bethlehem Shipbuilding Corporation, Ltd., Bethlehem Steel Corporation, Bethlehem Steel Company, Fore River Shipbuilding Corporation, and Union Iron Works Company, but that the exact amount of such moneys so

received by the respective defendants, and each of them, is unknown to complainant and can not be ascertained save by and through the accounting and discovery herein prayed for.

No Adequate Remedy at Law

Fifty-third. Complainant further shows that it has no adequate remedy at law; that the causes of action herein set forth are properly cognizable in a court of equity; that a multiplicity of suits will thereby be avoided, and that the relief herein sought can not be obtained except in a court of equity through discovery and accounting and through the equitable relief herein prayed for.

Prayer for Relief

Wherefore the complainant prays for judgment and equitable relief as follows:

First. That a writ or writs of subpœna to answer the bill issue out of this honorable court directed to the defendants above named and each of them, and with respect to such of the defendants as are not inhabitants of the Eastern District of Pennsylvania, or may not be found within such district or may not enter a voluntary general appearance, that service of such subpœna may be made within any district within the United States or the territorial or insular possessions thereof in which any such defendant may be found with the same force and effect as if the same had been served within the Eastern District of Pennsylvania, and, if necessary, that an order for service be made accordingly.

Second. That it be decreed that the terms and provisions in the contracts herein alleged and specified in Exhibit B annexed in so far as they provide for unreasonable and unconscionable profits in the guise of "fixed fee for profits" and/or "half savings", or otherwise, are void and unenforceable, and that this court fix and determine a reasonable and proper profit to be allowed the defendant Bethlehem Shipbuilding Corporation, Ltd., upon and with respect to each of said contracts, and that said defendant be required and directed to account to the complainant for all moneys of the United States received by it on account of profits and to pay to the complainant the excess received over and above such fair and reasonable profit.

Third. That this court fix and determine the reasonable and proper cost of construction of the vessels constructed under the contracts herein alleged and specified in Exhibit B, annexed, and that the defendant Bethlehem Shipbuilding Corporation, Ltd., be required and directed to account to the complainant for all moneys of the United States received by it on account of cost of construction of vessels under said contracts and to pay to the complainant the excess received over and above such reasonable and proper cost of construction.

Fourth. That the complainant have a decree against defendant Bethlehem Shipbuilding Corporation, Ltd., for the unpaid balance of the principal and for interest upon the sum of $8,000,000 paid as herein alleged, from the date of payment until the date of repayment thereof and have discovery and accounting with respect to such repayment, if any, and the time or times thereof.

Fifth. That this court determine the portion of the sum of $4,832,212.51 paid to defendant Bethlehem Shipbuilding Corporation, Ltd., as alleged in the Thirty-ninth Article of this bill, which the complainant is entitled to recover, and that complainant have a decree against said defendant therefor.

Sixth. That the defendants Bethlehem Steel Corporation and Bethlehem Shipbuilding Corporation, Ltd., and each of them, make discovery to the complainant of all the financial transactions had between them with respect to the shipbuilding contracts designated in Article Thirty-second of the bill, and particularly with respect to the distribution and allotment between said respective companies of the moneys paid to the defendant Bethlehem Shipbuilding Corporation, Ltd., by the complainant, through its agency the Fleet Corporation, in excess of a fair and reasonable profit upon each and all of said shipbuilding contracts, and also of all moneys of the United States so paid to said defendant under mistakes of law, mistakes of fact, wrongful construction of the terms of said contracts and other mistakes made by the United States Shipping Board, the Fleet Corporation, or any of their respective officers, agents, or employees.

Seventh. That the defendants Bethlehem Steel Company, Fore River Shipbuilding Corporation, and Union Iron Works Company, and each of them, make discovery to the complainant with respect to the moneys which they have severally wrongfully received from the complainant as overtime coefficient and severally account to the complainant therefor.

Eighth. That this court take and state an account between the complainant and defendants Bethlehem

Shipbuilding Corporation, Ltd., Bethlehem Steel Company, Fore River Shipbuilding Corporation, and Union Iron Works Company, and each of them, with respect to all moneys received by them, respectively, representing overtime coefficient in relation to the completion of requisitioned ships and of all moneys improperly or wrongfully received by each and all of them, respectively, with respect to and arising out of the transactions set forth in this bill.

Ninth. That the complainant have judgment and a decree for the payment by each of the defendants of all moneys improperly or wrongfully received by each and all of them for such amount as may be found to be due from them, respectively, upon the accounting with respect to the transactions set forth in the bill.

Tenth. That the complainant may have such other or further judgment, decree, or relief as it may be entitled to in the premises and as may be agreeable to equity and the practice of this court.

Dated this 17 day of April, 1925.

UNITED STATES OF AMERICA,
Complainant.

(Signed) GEORGE W. COLES,
United States Attorney for the Eastern District of Pennsylvania, Its Solicitor

JOHN G. SARGENT,
Attorney General.
JAMES M. BECK,
Solicitor General.

(Signed) HENRY P. BROWN,
Special Assistant to the Attorney General.
CHAUNCEY G. PARKER,
General Counsel United States Shipping Board.
HENRY M. WARD,
Special Assistant to the Attorney General.
Of Counsel.

EXHIBIT A

Showing Amounts Recoverable on Account of Payments Made in Error for So-called Half Savings

Contract No.:	Amounts Recoverable
183 S. C.	$ 402,056.25
299 S. C.	479,402.75
184 S. C.	470,053.70
314 S. C.	136,389.98
178 S. C.	113,610.02
196 S. C.	112,656.84
179 S. C.	515,223.37
226 S. C.	837,579.61
300 S. C.	667,660.53
191 S. C.	1,100,000.00
230 S. C.	455,000.00
177 S. C.	1,980,242.43
301 S. C.	1,744,757.57
Total	9,014,633.05

EXHIBIT B

Statement showing on overpayment on contract ships exclusive of erroneous payments for so-called half savings.

Contract No.	Cost of construction					Fixed feesf or profit			
	Maximum adjusted actual cost	Surplus material to be added to adjusted cost	Maximum actual cost to be credited to shipbuilder	Paid to shipbuilder account of actual cost	Recoverable overpayment to shipbuilder on actual cost	Fees for profit as fixed in contracts	Maximum profits allowable to shipbuilder (10 per cent of adjusted cost)	Paid to shipbuilder as fixed fees for profit	Recoverable overpayments to shipbuilder for profits on basis of allowance of 10 per cent for profit
177	$22,421,655.92	$53,859.63	$22,475,515.55	$22,791,035.96	$315,520.41	$2,520,000.00	$2,242,165.59	$2,268,000.00	$25,834.41
178	9,754,623.78	34,452.84	9,789,076.62	9,798,480.18	9,403.56	855,000.00	975,462.38	769,500.00	205,962.38
179	5,555,820.07	3,785.34	5,559,605.41	5,657,186.58	97,581.17	600,000.00	555,582.01	539,998.50	14,583.51
182	11,209,757.06	152,596.37	11,362,353.43	11,495,435.22	133,079.79	1,120,975.71	1,120,975.71	800,000.00	320,975.71
183	5,292,340.60	19,965.44	5,312,276.04	5,368,867.81	56,591.77	555,000.00	529,231.06	499,500.00	29,731.06
184	6,089,627.46	54,225.65	6,143,853.11	6,543,048.69	399,195.58	670,000.00	608,962.74	656,909.92	47,947.18
191	6,348,008.49	3,809.37	6,351,877.86	6,405,741.11	53,863.25	651,400.00	634,800.85	766,260.00	131,459.15
196	1,124,446.84		1,124,446.84	1,142,822.60	18,376.06	129,500.00	112,444.65	115,400.56	2,955.91
226	10,897,884.93	13,118.77	10,911,003.70	11,149,326.76	238,323.06	1,175,000.00	1,089,788.49	1,057,500.00	32,288.49
230	3,193,344.88	26,433.82	3,219,778.70	3,248,727.48	28,948.78	415,000.00	319,334.49	373,500.00	54,165.51
299	4,852,334.30	18,516.22	4,870,850.52	4,896,985.21	26,134.69	555,000.00	485,233.43	499,500.00	14,266.57
300	5,125,317.03	2,465.36	5,127,782.39	5,166,180.02	38,397.63	600,000.00	512,531.70	540,000.00	27,468.30
301	15,281,001.47	70,363.39	15,351,364.86	15,358,279.45	6,914.59	1,882,500.00	1,528,100.15	1,694,250.00	166,149.85
314	13,021,753.82	48,130.79	13,069,884.61	13,150,053.45	80,168.84	1,154,000.00	1,302,175.38	1,038,577.35	263,598.03
465	14,989,541.66	254,330.61	15,243,872.27	15,240,199.30	3,672.97	960,000.00	1,498,954.17	864,000.00	634,954.17
Undistributable credit due United States	67,917.48		67,917.48		67,917.48		6,791.75		6,791.75
	135,089,510.53	756,115.60	135,845,626.13	137,412,369.82	1,566,743.69	14,043,375.71	13,508,951.05	12,482,896.73	1,026,054.32

SUMMARY

Recoverable overpayments on cost of construction	$1,566,743.69
Net underpayments on fees for profit on basis of 10 per cent of maximum adjusted actual cost	1,026,054.32
Minimum amount recoverable by United States	540,689.37

EXHIBIT F

Showing General Overpayments and Other Sums Recoverable from the Bethlehem Shipbuilding Corporation (Ltd.)

Material sold to shipbuilder	$ 23,013.96
Surplus steel used by shipbuilder	33,013.02
Unbilled material	24,263.98
Carfare Sparrows Point	9,718.52
Idle plant, Sparrows Point	2,128.87
Cost of Perley Morse audit for period when auditors were excluded by shipbuilder	90,019.55
Total	$182,157.90

THE ANSWER OF THE DEFENDANT BETHLEHEM STEEL CORPORATION TO THE BILL OF COMPLAINT

(Filed July 25, 1925)

The defendant Bethlehem Steel Corporation (hereinafter called the defendant), for its separate answer to the bill of complaint in the above entitled action, says:

First: Answering Article First of the bill of complaint, it admits the facts therein averred. The defendant Bethlehem Shipbuilding Corporation, Ltd., is hereinafter called Bethlehem Ship; the defendant Fore River Shipbuilding Corporation, Fore River; the defendant Union Iron Works Company, Union; Harlan & Hollingsworth Corporation, Harlan; and Samuel L. Moore & Sons Corporation, Moore.

Second: Answering Article Second of the bill of complaint, it admits that many of the contracts between Bethlehem Ship and United States Shipping Board Emergency Fleet Corporation (hereinafter called the Fleet Corporation) referred to in the bill of complaint were made, executed and delivered within the Eastern District of Pennsylvania, and that moneys of the Fleet Corporation paid in con-

nection therewith were paid by the Fleet Corporation and received by Bethlehem Ship within the Eastern District of Pennsylvania. Except as so specifically admitted, it denies each and every averment of said Article Second.

Third: Answering Article Third of the bill of complaint, it admits the averments thereof.

Fourth: Answering Article Fourth of the bill of complaint, it admits the averments thereof.

Fifth: Answering Article Fifth of the bill of complaint, it admits that on April 16, 1917, pursuant to Section 11 of the Shipping Act of 1916, the United States Shipping Board caused the Fleet Corporation to be organized under the Act of Congress of March 3, 1901, entitled "An Act to Establish a Code of Law for the District of Columbia", and the provisions thereof relating to corporations to be organized in said District, and that such corporation has since existed and is now existing with such corporate powers as are specified in its certificate of incorporation, and in and by said Code of Law of the District of Columbia as limited and qualified by Section 11 of the Shipping Act of 1916, and Acts amendatory thereof. Except as so specifically admitted, it denies that it has any knowledge with respect to each and every averment of said Article Fifth.

Sixth: Answering Article Sixth of the bill of complaint, it admits the averments thereof.

Seventh: Answering Article Seventh of the bill of complaint, it admits the averments thereof.

Eighth: Answering Article Eighth of the bill of complaint, it admits the averments thereof.

Ninth: Answering Article Ninth of the bill of complaint, it admits the averments thereof.

Tenth: Answering Article Tenth of the bill of complaint, it admits that the Fleet Corporation, under its certificate of incorporation and under the Shipping Act of 1916, had no power or authority to bind the United States as its representative or agent or otherwise with respect thereto. Except as so specifically admitted, it denies each and every averment of said Article Tenth.

Eleventh: Answering Article Eleventh of the bill of complaint, it denies each and every averment thereof. It avers that each and all of the contracts referred to in the bill of complaint which were entered into or signed by, or in the name of, the Fleet Corporation, were made and entered into by such corporation as principal and as the real party in interest thereunder and not as the agent of the complainant. It avers further that each and every action taken by the Fleet Corporation under each and all of such contracts was taken by such corporation as principal and as the real party in interest thereunder and not as the agent of the complainant, and that Bethlehem Ship and the other defendants herein at all times dealt with such corporation thereunder solely on such basis.

Twelfth: Answering Article Twelfth of the bill of complaint, it admits that the transactions between Bethlehem Ship and the Fleet Corporation referred to in the bill of complaint, involved amounts greatly in excess of $50,000,000, and that

the Shipping Act of 1916 was in full force and effect during the period in which the contracts between Bethlehem Ship and the Fleet Corporation and the supplements thereto referred to in the bill of complaint were made. Except as so specifically admitted, it denies each and every averment of said Article Twelfth.

Thirteenth: Answering Article Thirteenth of the bill of complaint, it admits that it was incorporated under the laws of the State of New Jersey on or about December 10, 1904, in connection with the reorganization of United States Shipbuilding Company, and that on or about January 20, 1905, it acquired the entire capital stocks (except qualifying shares held by the directors thereof) of the defendant Bethlehem Steel Company, Union, Harlan and Moore, and of certain other corporations. Except as so specifically admitted, it denies each and every averment of said Article Thirteenth.

Fourteenth: Answering Article Fourteenth of the bill of complaint, it admits that prior to the transactions between Bethlehem Ship and the Fleet Corporation thereafter referred to in the bill of complaint, Penn Mary Steel Company, a Pennsylvania corporation, and a subsidiary of the defendant Bethlehem Steel Company, owned, among other things, a shipbuilding plant at Sparrows Point, Maryland. Such plant was acquired by Penn Mary Steel Company from Maryland Steel Company, a Maryland corporation, on or about July 1, 1916, (retroactive to March 1, 1916) and immediately thereafter Penn Mary Steel Company leased such plant, together with certain other properties, to the

defendant Bethlehem Steel Company, which thereafter and until on or about November 1, 1917, operated such plant. Maryland Steel Company was dissolved on or about November 4, 1919, and its assets taken over and it liabilities assumed by Penn Mary Steel Company as of July 1, 1916.

Prior to such transactions between Bethlehem Ship and the Fleet Corporation, and until the acquisition of such plant by Bethlehem Ship, Fore River owned a shipbuilding plant at Fore River, Massachusetts, which plant is now owned and operated by Bethlehem Ship.

On or about January 17, 1905, Union acquired all the properties of Union Iron Works and in 1909 acquired the capital stock of Union Iron Works Dry Dock Company, a California corporation. Prior to such transactions between Bethlehem Ship and the Fleet Corporation, and until the operation of such plant was taken over by Bethlehem Ship, Union operated a shipbuilding plant known as the Union plant at or near San Francisco, California.

Except as so specifically admitted, the defendant denies each and every averment of said Article Fourteenth.

Fifteenth: Answering Article Fifteenth of the bill of complaint, it admits that on or about August 3, 1917, the Fleet Corporation, purporting to act under the Act of June 15, 1917, and the Executive Order of July 11, 1917, served upon Fore River, Moore, Hanlan, Bethlehem Steel Company and Union an order purporting to requisition on behalf of the United States all power driven, cargo-carrying and passenger vessels, above 2500 tons dead-

weight capacity, under construction in their respective yards together with certain materials, machinery, equipment, outfit and commitments therefor necessary for the completion of such vessels, and it admits that thereafter the Fleet Corporation entered into contracts with such corporations covering the completion of such vessels. It denies that it has any knowledge with respect to the averments of said Article Fifteenth that on or about August 3, 1917, the complainant acting through the Fleet Corporation (under such Act and Executive Order) requisitioned all vessels of over 2500 tons, deadweight capacity then under construction in all shipyards throughout the United States. Except as so specifically admitted and except the averments with respect to which it has denied that it has any knowledge, it denies each and every averment of said Article Fifteenth.

Sixteenth: Answering Article Sixteenth of the bill of complaint, it admits that on or about October 15, 1917, Bethlehem Ship was organized under the laws of the State of Delaware, and that since the incorporation thereof, it has owned all of the capital stock of such corporation (except the qualifying shares held in the names of the directors thereof). Except as so specifically admitted, it denies each and every averment of said Article Sixteenth.

Seventeenth: Answering Article Seventeenth of the bill of complaint, it denies each and every averment thereof.

Eighteenth: Answering Article Eighteenth of the bill of complaint, it admits that on or about Oc-

tober 30, 1917, Bethlehem Ship acquired through corporate merger the properties of Harlan, including the Harlan plant at Wilmington, Delaware, and the properties formerly of Moore, including the Moore plant at Elizabethport, New Jersey, except a certain contract then in force between Moore and the United States and to other contracts then in force between Moore and the Fleet Corporation. It admits that the properties of Moore were first transferred to Moore Shipbuilding Corporation, a corporation organized under the laws of the State of Delaware, and that thereafter Moore Shipbuilding Corporation under the laws of Delaware was merged into Bethlehem Ship. It admits that by such merger Bethlehem Ship assumed all the liabilities of Harlan and Moore, and particularly their respective contractual obligations for the completion of the vessels under construction and included in such requisition orders of August 3, 1917. It admits that at or about the same time Bethlehem Ship also acquired from Penn Mary Steel Company such shipbuilding plant at Sparrows Point, Maryland, and that since such acquisition Bethlehem Ship has continuously operated such plant. Except as so specifically admitted, it denies each and every averment of said Article Eighteenth.

Nineteenth: Answering Article Nineteenth of the bill of complaint, it admits that on or about November 1, 1917, the plants of Fore River, Union and Union Iron Works Dry Dock Company were leased by such corporations, respectively, to Bethlehem Ship and that from the effective dates of such leases Bethlehem Ship has operated such plants.

It admits that on or about the same date, Bethlehem Ship entered into agreements with the defendant Bethlehem Steel Company, Fore River and Union, respectively, whereby Bethlehem Ship undertook the performance of all of the outstanding contracts of such corporations with the Fleet Corporation for the construction of vessels covered by such requisition orders of August 3, 1917, and it admits that, with the consent of the Fleet Corporation, Bethlehem Ship thereafter entered into and continued in the performance of such contracts and of contracts made in substitution or modification thereof during the period referred to in the bill of complaint. Except as so specifically admitted, it denies each and every averment of said Article Nineteenth.

Twentieth: Answering Article Twentieth of the bill of complaint, it admits that at the time of the making of the contracts between Bethlehem Ship and the Fleet Corporation thereafter referred to in the bill of complaint, the defendant Bethlehem Steel Company, Fore River, Union, and Bethlehem Ship, through the predecessors thereof, Moore and Harlan, were in a position to know what the cost of building the various types of steel vessels which had prior thereto been built by such respective corporations at their respective plants had been, and it admits that at such time Bethlehem Ship maintained at the Fore River, Moore, Harlan, Sparrows Point and Union plants and at Bethlehem, Pennsylvania, an organization engaged in the building of vessels. It admits that after the organization of Bethlehem Ship and throughout the transactions mentioned in the bill of complaint it owned the cap-

ital stock of Bethlehem Ship, Bethlehem Steel Company and Union, and that by reason of such stock ownership it became entitled to dividends as and when declared from the net earnings of such corporations. The capital stock of Fore River was owned by Bethlehem Steel Company until on or about May 2, 1918, at which time it was transferred to the defendant. Except as so specifically admitted, it denies each and every averment of said Article Twentieth.

Twenty-first: Answering Article Twenty-first of the bill of complaint, it admits that immediately after the incorporation thereof, Bethlehem Ship took over a large part of the organization and personnel of Harlan, Moore, Fore River, Union and Union Iron Works Dry Dock Company, and of the Sparrows Point plant acquired as aforesaid. It admits that upon the organization of Bethlehem Ship, and prior to the making by Bethlehem Ship of the contracts with the Fleet Corporation dated December 31, 1917, thereafter referred to in the bill of complaint, the general basis of the organization of Bethlehem Ship was, and continued thereafter to be, substantially as follows: The shipbuilding plant at Wilmington, Delaware, which formerly belonged to Harlan, was operated and known as the Harlan plant. The shipbuilding plant at Elizabethport, New Jersey, which formerly belonged to Moore, was operated and known as the Moore plant. The shipbuilding plant at Fore River, Massachusetts, was operated and known as the Fore River plant. The shipbuilding plant at Sparrows Point, Maryland, was operated and known as the Sparrows Point plant. And the plants on the Pacific Coast

formerly operated by the defendant Union and by the Union Iron Works Dry Dock Company, were operated and known as the Union plant. The defendant denies that it has any knowledge with respect to the averments of said Article Twenty-first that neither the complainant, nor its said agency the Fleet Corporation; nor the United States Shipping Board, nor any members of the organization of either of said bodies (except, as thereafter in the bill of complaint stated, Charles M. Schwab), were entirely familiar with, and had special expert knowledge of, the actual and probable cost of building such vessels and of estimating the profits to be derived therefrom.

The defendant admits that in November and December, 1917, and at various times thereafter the Government undertook to fix the rates of wages payable to labor engaged in shipbuilding work for the Government and for the Fleet Corporation, and that such action of the Government was known to the defendant.

Except as so specifically admitted and except the averments with respect to which it has denied that it has any knowledge, it denies each and every averment of said Article Twenty-first.

Twenty-second: Answering Article Twenty-second of the bill of complaint, it admits that because of the necessity for constructing vessels to meet the emergencies and requirements of the war, particularly the enormous loss of vessels caused by the unrestricted submarine warfare undertaken by the German Empire, an extraordinary emergency of the war existed and rendered it necessary for the

Government to control generally the entire shipbuilding, steel, coal, transportation and other industries of the United States and to obtain as many vessels as it was possible for each shipbuilder of the country to construct, and to have the same constructed in the least possible period of time, and it admits that these conditions and this emergency were known to the public in general and to the defendant. It avers that such extraordinary emergency and the conditions and circumstances resulting therefrom were better known to the Fleet Corporation and to the complainant than they were to the defendant. Except as so specifically admitted, it denies each and every averment of said Article Twenty-second.

Twenty-third: Answering Article Twenty-third of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Twenty-fourth: Answering Article Twenty-fourth of the bill of complaint, it admits that Bethlehem Ship was under a duty to perform each and all of its contracts fairly and honestly in accordance with their terms. Except as so specifically admitted it denies each and every averment of said Article Twenty-fourth.

Twenty-fifth: Answering Article Twenty-fifth of the bill of complaint, it denies that it has any knowledge with respect to the averments thereof that during the period in which the contracts thereafter in the bill of complaint referred to, were entered into, the Government of the United States acting under its constitutional powers, had in other

instances fixed and limited the profit to be made by other shipbuilders constructing similar ships under similar circumstances, and in the vicinity of the various shipbuilding plants so operated by the defendants at a sum not to succeed ten per cent. (10%) of the actual cost thereof, and in many instances at a sum much less than ten per cent. (10%) of the actual cost thereof. Except as aforesaid, it denies each and every averment of said Article Twenty-fifth.

Twenty-sixth: Answering Article Twenty-sixth of the bill of complaint, it admits that on or about April 16, 1918, Charles M. Schwab, at the request of the President of the United States, entered upon the office of Director General of the Fleet Corporation and continued in that office until December 12, 1918.

It admits that during the time that Charles M. Schwab was Director General of the Fleet Corporation he was a stockholder and Chairman of the Board of Directors of the defendant, and that during such period Joseph W. Powell was a Vice-President of Bethlehem Ship and, as such, in charge generally of the contracts between Bethlehem Ship and the Fleet Corporation and of the performance thereof. It admits that during such period Charles M. Schwab took no official action with regard to the shipbuilding contracts specified in the bill of complaint, and refrained from questioning the provisions of such contracts with respect to the fixed fee for profit and the sharing of the difference between the estimated cost and the actual cost of the vessels constructed thereunder. It also admits that the

contracts between Bethlehem Ship and the Fleet Corporation annexed to the answer of Bethlehem Ship herein, as Exhibits 15-22, inclusive, thereto were made during the time that Charles M. Schwab was Director General, but prays that reference be made to the averments of Article Fifty-ninth hereof for a fuller explanation thereof.

Except as so specifically admitted, it denies each and every averment of said Article Twenty-six.

Twenty-seventh: Answering Article Twenty-seventh of the bill of complaint, it admits that during the time that Charles M. Schwab was Director General of the Fleet Corporation, it owned the capital stock of Bethlehem Steel Company, Bethlehem Ship, Fore River and Union, and by virtue thereof had stock control of such corporations. Except as so specifically admitted, it denies each and every averment of said Article Twenty-seventh.

Twenty-eighth: Answering Article Twenty-eighth of the bill of complaint, it denies each and every averment thereof.

Twenty-ninth: Answering Article Twenty-ninth of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Thirtieth: Answering Article Thirtieth of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Thirty-first: Answering Article Thirty-first of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Thirty-second: Answering Article Thirty-second of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Thirty-third: Answering Article Thirty-third of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Thirty-fourth: Answering Article Thirty-fourth of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Thirty-fifth: Answering Article Thirty-fifth of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Thirty-sixth: Answering Article Thirty-sixth of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Thirty-seventh: Answering Article Thirty-seventh of the bill of complaint, it admits that in order to provide Bethlehem Ship with additional facilities with which to expedite the construction of vessels for the Fleet Corporation, Bethlehem Ship and the Fleet Corporation made and entered into the contracts and the Fleet Corporation made the authorizations referred to in Exhibit C to the bill of complaint, under which Bethlehem Ship constructed and provided certain special improvements and additional facilities for the Fleet Corporation and for which the Fleet Corporation paid in part as shown

by such Exhibit, but it avers that such contracts were between the Fleet Corporation and Bethlehem Ship and such authorizations were given by the Fleet Corporation to Bethlehem Ship and all the transactions under such contracts and authorizations were between the Fleet Corporation and Bethlehem Ship. Except as so specifically admitted, it denies that it has any knowledge with respect to each and every averment of said Article Thirty-seventh.

Thirty-eighth: Answering Article Thirty-eighth of the bill of complaint, it denies each and every averment thereof.

Thirty-ninth: Answering Article Thirty-ninth of the bill of complaint, it denies that it has any knowledge with respect to the averments of said Article Thirty-ninth that there has been no appraisal made of the value of such tools and improvements; that the parties have never been able to agree upon any basis for the adjustment of the complainant's claim with respect to the amount so advanced; that offers of compromise have been made from time to time under which, but subject to conditions not agreed to by the complainant, Bethlehem Ship has offered to pay therefor upward of $1,349,000. Except the averments with respect to which it has denied that it has any knowledge, it denies each and every averment of said Article Thirty-ninth.

Fortieth: Answering Article Fortieth of the bill of complaint, it admits that after the issuance and service upon the defendant Bethlehem Steel Company, Fore River, Union, Harlan and Moore of the requisition orders of August 3, 1917, and on or

about August 22, 1917, the Fleet Corporation ordered such respective corporations to complete the vessels covered by such requisition orders substantially in accordance with the plans and specifications provided by the original contracts for such vessels between such respective corporations and the purchasers or former owners thereof and agreed to pay for the work of such completion the amounts specified in such original contracts then unpaid, and it admits that such orders dated August 22, 1917, were accepted by such respective corporations on such condition and that the completion of such vessels was subsequently taken over by Bethlehem Ship which completed such vessels and delivered the same to or on the order of the Fleet Corporation. Except as so specifically admitted, it denies each and every averment of said Article Fortieth.

Forty-first: Answering Article Forty-first of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Forty-second: Answering Article Forty-second of the bill of complaint, it admits that the contracts under which such vessels were being constructed for private purchasers (except three) were on a lump sum basis and not on the basis of cost plus a percentage for profit and that the respective shipbuilding corporations were not entitled under such contracts to additional compensation for overtime work on such construction. Except as so specifically admitted, it denies each and every averment of said Article Forty-second.

Forty-third: Answering Article Forty-third of the bill of complaint, it admits that during the war the Government, in furtherance of the war shipbuilding program, directed that, with respect to all shipbuilding work carried on for the Government and for the Fleet Corporation, eight hours per day should constitute the normal time of employment for labor, and that for all labor employed over eight hours in any day a bonus at times of fifty per cent. (50%) and at other times of one hundred per cent. (100%) should be paid, and that all work on Saturday afternoons, Sundays, and holidays should be deemed to be overtime and that with respect thereto a bonus of one hundred per cent. (100%) per hour should be paid, and it admits that the basis of compensation for such overtime is commonly known as "time and a half" and "double time" according as the bonus is fifty per cent. (50%) or one hundred per cent. (100%). Except as so specifically admitted, it denies each and every averment of said Article Forty-third.

Forty-fourth: Answering Article Forty-fourth of the bill of complaint, it admits that after the date of the requisition of the vessels under construction by the defendant Bethlehem Steel Company, Fore River, Union, Moore and Harlan and before the completion of such vessels was undertaken by Bethlehem Ship, agreements were entered into between the Fleet Corporation and the defendant Bethlehem Steel Company, Fore River, Union, Moore and Harlan respectively, for the completion of such vessels. It admits that subsequently and on or about November 1, 1917, the defendant Bethlehem Steel Company, Fore River and Union, re-

spectively, entered into agreements with Bethlehem Ship as hereinbefore in Article Nineteenth hereof set forth. It admits that on or about October 1, 1917, Moore and Moore Shipbuilding Corporation entered into an agreement whereby the latter agreed as agent for Moore to complete the vessels under construction by Moore and included in such requisition order of August 3, 1917, and that upon the merger of Moore Shipbuilding Corporation and Harlan into Bethlehem Ship all the assets and liabilities of both such corporations, including the performance of all their executory contracts, were taken over by Bethlehem Ship which thereby became obligated to complete the aforesaid vessels on behalf of Moore and to complete all contracts which Harlan was obligated to perform. It admits that thereafter and prior to the institution of this suit, Moore was dissolved and thereupon all its contractual obligations, including those relating to such vessels, were undertaken by Bethlehem Ship. Except as so specifically admitted, it denies each and every averment of said Article Forty-fourth.

Forty-fifth: Answering Article Forty-fifth of the bill of complaint, it admits that during the period of construction of the vessels covered by such requisition orders Bethlehem Steel Company, Fore River, Moore, Harlan and Union and Bethlehem Ship employed overtime in the construction thereof. Except as so specifically admitted, it denies each and every averment of said Article Forty-fifth.

Forty-sixth: Answering Article Forty-sixth of the bill of complaint, it admits that the various "overtime co-efficients" which were adopted and

applied to overtime and which the Fleet Corporation agreed to pay as set forth in Articles Forty-sixth and Eightieth of the Answer of Bethlehem Ship on file in this action were arrived at as in said Article Forty-sixth of said Answer of Bethlehem Ship set forth. Except as so specifically admitted, it denies each and every averment of said Article Forty-sixth.

Forty-seventh: Answering Article Forty-seventh of the bill of complaint, it denies each and every averment thereof.

Forty-eighth: Answering Article Forty-eighth of the bill of complaint, it admits that from time to time Bethlehem Ship included in its statements to the Fleet Corporation amounts on account of such "overtime co-efficients". Except as so specifically admitted, it denies each and every averment of said Article Forty-eighth.

Forty-ninth: Answering Article Forty-ninth of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Fiftieth: Answering Article Fiftieth of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Fifty-first: Answering Article Fifty-first of the bill of complaint, it admits that controversies have arisen between Bethlehem Ship and the Fleet Corporation as to the proper construction and effect of the terms and provisions of the contracts referred to in Article Thirty-second of the bill of complaint and particularly of Articles XVII and

XIX of such contracts, and it admits that statements of accounts have been prepared and submitted by Bethlehem Ship; but it denies that it has in any way participated in such controversies. Except as so specifically admitted and except as so denied, it denies that it has any knowledge with respect to each and every averment of said Article Fifty-first.

Fifty-second: Answering Article Fifty-second of the bill of complaint, it denies each and every averment thereof.

Fifty-third: Answering Article Fifty-third, being advised that it is not required to admit or deny the conclusions of law in said Article pleaded, it neither admits nor denies the averments of said Article.

As a general defense to each and every claim of the complainant against it set forth in the Bill of Complaint, the defendant, hereby reiterating each and every denial and averment hereinbefore contained, further says:

Fifty-fourth: Each and every contract referred to in Article Twenty-ninth of the bill of complaint and listed in Exhibit B thereto was made and entered into by and between the Fleet Corporation and Bethlehem Ship, and each and every transaction under such contracts was between the Fleet Corporation and Bethlehem Ship. Each and every contract and authorization referred to in Article Thirty-seventh of the bill of complaint and listed in Exhibit C thereto was made and entered into by and between the Fleet Corporation and Bethlehem Ship and each and every transaction thereunder

was between the Fleet Corporation and Bethlehem Ship. Each and every order referred to in Article Fortieth of the bill of complaint was given by the Fleet Corporation, respectively, to Bethlehem Steel Company, Fore River, Union, Harlan and Moore and each and every contract resulting from the acceptance of such orders was between the Fleet Corporation and such corporations and Bethlehem Ship and all of the transactions thereunder were between the Fleet Corporation and such Corporations and Bethlehem Ship. None of the contracts referred to in the bill of complaint was made or entered into by the defendant and none of the transactions under such contracts set forth in the bill of complaint was participated in by the defendant. Neither Bethlehem Ship nor any one of the other defendants herein acted as agent for the defendant in any of the transactions set forth in the bill of complaint. Finally, the defendant avers that it has not received any of the specific moneys which the complainant alleges were paid from time to time to Bethlehem Ship and the other defendants herein as set forth in the bill of complaint, but has benefited from the operations of the other defendants herein only to the extent that they have declared dividends payable to it from their net earnings.

As a separate and special defense to each and every claim of the complainant based upon the averments of Articles Twenty-sixth, Twenty-seventh, Twenty-eighth, Twenty-ninth and the last sentence of Article Forty-ninth of the Bill of Complaint, the defendant, hereby reiterating each and every denial and averment hereinbefore contained, and not waiving but insisting upon the defenses hereinbefore pleaded, but in addition thereto, says:

Fifty-fifth: At the instance of the United States Shipping Board, and especially of Edward N. Hurley, its Chairman, and Bainbridge Colby, one of its members, Charles M. Schwab was invited by President Wilson to become Director General of the Fleet Corporation at a time of an acute crisis in its affairs and for the special purpose of speeding up its ship construction program. Charles M. Schwab objected to accepting the appointment, giving as one reason that he could be of more service as the head of the Bethlehem enterprises, and as a second reason that he could not divest himself of his relations with Bethlehem. He was assured, however, by President Wilson and Messrs. Hurley and Colby that he need have no fear on account of his relations with Bethlehem, and he finally yielded to their urgings upon the express understanding and agreement that while Director General of the Fleet Corporation he was not to participate in any way in transactions between the Fleet Corporation and the defendants herein.

Fifty-sixth: In pursuance of such understanding and agreement and promptly after taking office, he wrote to the President and Trustees of the Fleet Corporation a letter, of which the following is a copy:

"April 30, 1918.

"To the President and Trustees of the United States Shipping Board Emergency Fleet Corporation:

Dear Sirs:

The United States Shipping Board Emergency Fleet Corporation, of which I have been

appointed Director General, has, or may in the future have, contracts or other business relations not only with the Bethlehem Steel Corporation, of which I am an officer, director and stockholder, but also with certain of its subsidiary companies in which I am directly or indirectly interested.

I am of the opinion that it would be inadvisable for me to participate, as such Director General, in the transaction of any business between the Emergency Fleet Corporation and any of the said companies, with special reference to the making of contracts with, or the giving of orders to, such companies, and, therefore, request that all business between the United States Shipping Board Emergency Fleet Corporation and the companies named below may be handled entirely by such other officers or agents of the Emergency Fleet Corporation as you may designate.

Bethlehem Steel Corporation,
Bethlehem Steel Company,
Bethlehem Steel Bridge Corporation,
Bethlehem Loading Company,
Fore River Shipbuilding Corporation,
The Detrick & Harvey Machine Company,
Bethlehem Steel Products Company,
Ore Steamship Corporation,
Saucon Land & Improvement Company,
Bethlehem Securities Company,
Bethlehem Shipbuilding Corporation, Ltd.,
Union Iron Works Company,

Union Iron Works Dry Dock Company.

Yours very truly,

(Sgd.) C. M. Schwab.

CE-MS"

Fifty-seventh: Immediately thereafter, on May 2, 1918, in accordance with such understanding and agreement, the Board of Trustees of the Fleet Corporation formally incorporated such letter into their minutes, and at the same time by resolution provided that all contracts before execution should be submitted to such Board for their approval. A copy of such resolution is as follows:

> "Resolved, that all contracts of the United States Shipping Board Emergency Fleet Corporation, after they are approved by the Vice-President and Secretary, whether for the Operating or Construction Divisions, be submitted to the Board of Trustees for their approval and then approved by the officers of the Corporation authorized by the Board of Trustees and formally executed."

Charles M. Schwab was never at any time a member of the Board of Trustees of the Fleet Corporation.

Fifty-eighth: Charles M. Schwab faithfully carried out such understanding and agreement and did not at any time take any part, either directly or indirectly, in any of the relations and transactions between the Fleet Corporation and the defendants herein.

Fifty-ninth: All of the contracts between the Fleet Corporation and Bethlehem Ship listed in

Article Twenty-ninth of the bill of complaint and in Exhibit 1 to the answer of Bethlehem Ship on file herein, with the exception of contracts numbered 299, 300, 301, 312, 313, 314, 340 and 465, were agreed upon and signed before Charles M. Schwab entered upon his duties as Director General of the Fleet Corporation. Of the exceptions, contracts numbered 299, 300, 301, 312, 313 and 314 were simply replicas of earlier contracts, except that the fixed fees and estimated costs specified in such later contracts were lower than the fixed fees and estimated costs fixed in such earlier contracts. Three of such contracts, to wit, contracts numbered 312, 313 and 340 were cancelled and therefore are not involved in the claim of the complainant that Charles M. Schwab should have modified all such contracts listed in Article Twenty-ninth of the bill of complaint. The remaining exception, contract numbered 465, was dated July 15, 1918, but, as in the case of all such other contracts, Charles M. Schwab had nothing to do with the negotiation of such contract.

Sixtieth: Finally, the vessels covered by such contracts were of unusual design and required a comparatively long period of time for the construction thereof, and during the time that Charles M. Schwab was Director General of the Fleet Corporation such vessels had not been sufficiently completed for anyone to estimate with any degree of accuracy what the ultimate cost of such vessels would be.

Insufficiency of Bill of Complaint.

Sixty-first: Further answering the bill of complaint, and in lieu of motions to dismiss the bill of complaint or parts thereof before answer, the defendant says that the complainant is not entitled to recover of the defendant in this action because it has not stated facts sufficient to constitute a valid cause of action in equity against the defendant, and that the complainant is not the proper party to bring this action.

Wherefore, the defendant prays:

1. That the bill of complaint be, in all respects dismissed, with the costs of this action.

2. That the defendant have such other and further relief as may be just and equitable.

CHARLES SINKLER,
Solicitor for the Defendant Bethlehem Steel Corporation.

CRAVATH, HENDERSON & DE GERSDORFF,
of Counsel.
July 25, 1925.

THE ANSWER OF THE DEFENDANT, BETHLEHEM SHIPBUILDING CORPORATION, LTD., TO THE BILL OF COMPLAINT

(Filed July 24, 1925)

The defendant, Bethlehem Shipbuilding Corporation, Ltd., (hereinafter called the defendant), for its separate answer and counterclaim to the bill of complaint in the above entitled action, says:

First: Answering Article First of the bill of complaint, it admits the facts therein averred. The defendant Fore River Shipbuilding Corporation is hereinafter called Fore River; the defendant Union Iron Works Company, Union; Harlan & Hollingsworth Corporation, Harlan; and Samuel L. Moore & Sons Corporation, Moore.

Second: Answering Article Second of the bill of complaint, it admits that many of the contracts between it and United States Shipping Board Emergency Fleet Corporation (hereinafter called the Fleet Corporation) referred to herein and in the bill of complaint were made, executed, and delivered within the Eastern District of Pennsylvania and that moneys of the Fleet Corporation paid in connection therewith were paid by the Fleet Corporation and received by the defendant within the Eastern District of Pennsylvania. Except as so specifically admitted, it denies each and every averment of said Article Second.

Third: Answering Article Third of the bill of complaint, it admits the averments thereof.

Fourth: Answering Article Fourth of the bill of complaint, it admits the averments thereof.

Fifth: Answering Article Fifth of the bill of complaint, it admits that on April 16, 1917, pursuant to Section 11 of the Shipping Act of 1916, the United States Shipping Board caused the Fleet Corporation to be organized under the Act of Congress of March 3, 1901, entitled "An Act to Establish a Code of Law for the District of Columbia", and the provisions thereof relating to corporations to be organized in said District, and that such corporation has since existed and is now existing with such corporate powers as are specified in its certificate of incorporation, and in and by said Code of Law of the District of Columbia as limited and qualified by Section 11 of the Shipping Act of 1916, and Acts amendatory thereof. Except as so specifically admitted, it denies that it has any knowledge with respect to each and every averment of said Article Fifth.

Sixth: Answering Article Sixth of the bill of complaint, it admits the averments thereof.

Seventh: Answering Article Seventh of the bill of complaint, it admits the averments thereof.

Eighth: Answering Article Eighth of the bill of complaint, it admits the averments thereof.

Ninth: Answering Article Ninth of the bill of complaint, it admits the averments thereof.

Tenth: Answering Article Tenth of the bill of complaint, it admits that the Fleet Corporation,

under its certificate of incorporation and under the Shipping Act of 1916, had no power or authority to bind the United States as its representative or agent or otherwise with respect thereto. Except as so specifically admitted, it denies each and every averment of said Article Tenth.

Eleventh: Answering Article Eleventh of the bill of complaint, it denies each and every averment thereof. It avers that each and all of the contracts referred to in the bill of complaint which were entered into, or signed by, or in the name of, the Fleet Corporation, were made and entered into by such corporation as principal and as the real party in interest thereunder and not as the agent of the complainant. It avers further that each and every action taken by the Fleet Corporation under each and all of such contracts was taken by such corporation as principal and as the real party in interest thereunder and not as the agent of the complainant, and the defendant at all times dealt with such corporation thereunder solely on such basis.

Twelfth: Answering Article Twelfth of the bill of complaint, it admits that the transactions between it and the Fleet Corporation referred to in the bill of complaint and hereinafter more fully set out, involved amounts greatly in excess of $50,000,000, and that the Shipping Act of 1916 was in full force and effect during the period in which the contracts between it and the Fleet Corporation and the supplements thereto referred to in the bill of complaint were made. Except as so specifically admitted, it denies each and every averment of said Article Twelfth.

Thirteenth: Answering Article Thirteenth of the bill of complaint, it admits that the defendant Bethlehem Steel Corporation was incorporated under the laws of the State of New Jersey on or about December 10, 1904, in connection with the reorganization of United States Shipbuilding Company, and that on or about January 20, 1905, such defendant acquired the entire capital stocks (except qualifying shares held by the directors thereof) of the defendants Bethlehem Steel Company and Union, and of Harlan and Moore, and of certain other corporations. Except as so specifically admitted, it denies each and every averment of said Article Thirteenth.

Fourteenth: Answering Article Fourteenth of the bill of complaint, it admits that prior to the transactions between it and the Fleet Corporation thereafter referred to in the bill of complaint, Penn Mary Steel Company, a Pennsylvania corporation, and a subsidiary of the defendant Bethlehem Steel Company, owned, among other things, a shipbuilding plant at Sparrows Point, Maryland. Such plant was acquired by Penn Mary Steel Company from Maryland Steel Company, a Maryland Corporation, on or about July 1, 1916 (retroactive to March 1, 1916), and immediately thereafter Penn Mary Steel Company leased such plant, together with certain other properties, to the defendant Bethlehem Steel Company, which thereafter and until on or about November 1, 1917, operated such plant. Maryland Steel Company was dissolved on or about November 4, 1919, and its assets taken over and its liabilities assumed by Penn Mary Steel Company as of July 1, 1916.

Prior to the transactions between the defendant and the Fleet Corporation thereafter referred to in the bill of complaint, and until the acquisition thereof by the defendant, Fore River owned a shipbuilding plant at Fore River, Massachusetts, which plant is now owned and operated by the defendant.

On or about January 17, 1905, Union acquired all the properties of Union Iron Works and in 1909 acquired the capital stock of Union Iron Works Dry Dock Company, a California corporation. Prior to the transactions between the defendant and the Fleet Corporation thereafter referred to in the bill of complaint, and until the operation thereof was taken over by the defendant, Union operated a shipbuilding plant known as the Union plant at or near San Francisco, California

Except as so specifically admitted, the defendant denies each and every averment of said Article Fourteenth.

Fifteenth: Answering Article Fifteenth of the bill of complaint, it admits that on or about August 3, 1917, the Fleet Corporation, purporting to act under the Act of June 15, 1917, and the Executive Order of July 11, 1917, served upon Fore River, Bethlehem Steel Company, Union, Harlan and Moore an order purporting to requisition on behalf of the United States all power driven, cargo-carrying and passenger vessels, above 2500 tons dead-weight capacity, under construction in their respective yards together with certain materials, machinery, equipment, outfit and commitments therefor necessary for the completion of such vessels, and it admits that thereafter the Fleet Cor-

poration entered into contracts with such corporations covering the completion of such vessels as hereinafter in Article Seventy-fifth hereof set forth. It denies that it has any knowledge with respect to the averments of said Article Fifteenth that on or about August 3, 1917, the complainant acting through the Fleet Corporation (under such Act and Executive Order) requisitioned all vessels of over 2500 tons deadweight capacity then under construction in all shipyards throughout the United States. Except as so specifically admitted and except the averments with respect to which it has denied that it has any knowledge, it denies each and every averment of said Article Fifteenth.

Sixteenth: Answering Article Sixteenth of the bill of complaint, it admits that on or about October 15, 1917, it was organized under the laws of the State of Delaware, and that since its incorporation, the defendant Bethlehem Steel Corporation has owned all of its capital stock (except the qualifying shares held in the names of its directors). Except as so specifically admitted, it denies each and every averment of said Article Sixteenth.

Seventeenth: Answering Article Seventeenth of the bill of complaint, it admits that on or about December 13, 1917, the Fleet Corporation and it entered into preliminary negotiations with respect to the construction by it for the Fleet Corporation of certain steel vessels. Except as so specifically admitted, it denies each and every averment of said Article Seventeenth.

Eighteenth: Answering Article Eighteenth of the bill of complaint, it admits that on or about

October 30, 1917, it acquired through corporate merger the properties of Harlan, including its shipbuilding plant at Wilmington, Delaware, and the properties formerly of Moore, including the Moore plant at Elizabethport, New Jersey, except a certain contract then in force between Moore and the United States and two other contracts then in force between Moore and the Fleet Corporation. It admits that the properties of Moore were first transferred to Moore Shipbuilding Corporation, a corporation organized under the laws of the State of Delaware, and that thereafter Moore Shipbuilding Corporation under the laws of Delaware was merged into the defendant. It admits that by such merger it assumed all the liabilities of Harlan and Moore, and particularly their respective contractual obligations for the completion of the vessels under construction and included in such requisition orders of August 3, 1917. It admits that at or about the same time it also acquired from Penn Mary Steel Company such shipbuilding plant at Sparrows Point, Maryland, and that since such acquisition it has continuously operated such plant. Except as so specifically admitted, it denies each and every averment of said Article Eighteenth.

Nineteenth: Answering Article Nineteenth of the bill of complaint, it admits that on or about November 1, 1917, the plants of Fore River, Union and Union Iron Works Dry Dock Company were leased by such corporations, respectively, to it and that from the effective dates of such leases it has operated such plants. It admits that on or about the same date it entered into agreements with the defendant Bethlehem Steel Company, Fore River and

Union, respectively, whereby it undertook to perform all of the outstanding contracts of such corporations with the Fleet Corporation for the construction of vessels covered by such requisition orders of August 3, 1917, and it admits that, with the consent of the Fleet Corporation, it thereafter entered into and continued in the performance of such contracts and of contracts made in substitution or modification thereof during the period referred to in the bill of complaint; all as in Article Seventy-sixth hereof set forth. Except as so specifically admitted, it denies each and every averment of said Article Nineteenth.

Twentieth: Answering Article Twentieth of the bill of complaint, it admits that at the time of the making of the contracts between it and the Fleet Corporation thereafter referred to in the bill of complaint, the defendant Bethlehem Steel Company, Fore River, Union, and the defendant, through its predecessors, Moore and Harlan, knew what the cost of building the various types of steel vessels which had prior thereto been built by such respective corporations at their respective plants had been, and it admits that at such time it maintained at the Fore River, Moore, Harlan, Sparrows Point and Union plants and at its office at Bethlehem, Pennsylvania, an organization engaged in the building of vessels. It admits that after its organization and throughout the transactions herein and in the complaint mentioned the defendant Bethlehem Steel Corporation owned its stock and the stock of Bethlehem Steel Company and Union, and that by reason of such stock ownership the defendant Bethlehem Steel Corporation became entitled

to dividends as and when declared from the net earnings of such defendant corporations. The capital stock of Fore River was owned by Bethlehem Steel Company until on or about May 2, 1918, at which time it was transferred to the defendant Bethlehem Steel Corporation. Except as so specifically admitted, it denies each and every averment of said Article Twentieth.

Twenty-first: Answering Article Twenty-first of the bill of complaint, it admits that immediately after its incorporation it took over a large part of the organization and personnel of Harlan and Moore, of the other defendant shipbuilding corporations, control of which it acquired as above mentioned, by lease, or otherwise, and of the Sparrows Point plant acquired as aforesaid. It admits that upon its organization, and prior to the making of the contracts with the Fleet Corporation dated December 31, 1917, thereafter referred to in the bill of complaint, the general basis of its organization was, and continued thereafter to be, substantially as follows: The shipbuilding plant at Wilmington, Delaware, which formerly belonged to Harlan, was operated and known as its Harlan plant. The shipbuilding plant at Elizabethport, New Jersey, which formerly belonged to Moore, was operated and known as its Moore plant. The shipbuilding plant at Fore River, Massachusetts, was operated and known as its Fore River plant. The shipbuilding plant at Sparrows Point, Maryland, was operated and known as its Sparrows Point plant. And the plants on the Pacific Coast formerly operated by the defendant Union and by the Union Iron Works Dry Dock Company, were operated

and known as its Union plant. The defendant denies that it has any knowledge with respect to the averment of said Article Twenty-first that neither the complainant, nor its said agency the Fleet Corporation, nor the United States Shipping Board, nor any members of the organization of either of said bodies (except, as thereafter in the bill of complaint stated, Charles M. Schwab), were entirely familiar with, and had special expert knowledge of, the actual and probable cost of building such vessels and of estimating the profits to be derived therefrom. It avers that, in October, November and December, 1917, and throughout the period of construction of the vessels which the defendant constructed for the Fleet Corporation under the contracts aforesaid, the Fleet Corporation had in its organization and otherwise at its disposal thoroughly capable, honest and fearless officials and employees, many of whom were thoroughly experienced in shipbuilding and thoroughly familiar with the elements of cost ordinarily entering into ship construction and it avers that such officials and employees were as capable of arriving at figures of estimated cost to be specified in such contracts as the officials and employees of the defendant.

The defendant admits that in November and December, 1917, and at various times thereafter the Government undertook to fix the rates of wages payable to labor engaged in shipbuilding work for the Government and for the Fleet Corporation, and that such action of the Government was known to the defendant. It avers, however, that neither in October, November and December, 1917, nor at any

time thereafter, did the Government fix the cost of labor entering into such shipbuilding work; on the contrary, in October, November and December, 1917, the cost of labor entering into such shipbuilding work thereafter to be undertaken was unknown and incapable of calculation, and the Fleet Corporation was as capable of prophesying what the cost of such labor would be as the defendant.

Except as so specifically admitted, and except the averments with respect to which it has denied that it has any knowledge, it denies each and every averment of said Article Twenty-first.

Twenty-second: Answering Article Twenty-second of the bill of complaint, it admits that because of the necessity for constructing vessels to meet the emergencies and requirements of the war, particularly the enormous loss of vessels caused by the unrestricted submarine warfare undertaken by the German Empire, an extraordinary emergency of the war existed and rendered it necessary for the Government to control generally the entire shipbuilding, steel, coal, transportation and other industries of the United States and to obtain as many vessels as it was possible for each shipbuilder of the country to construct, and to have the same constructed in the least possible period of time, and it admits that these conditions and this emergency were known to the public in general and to the defendant. It avers that such extraordinary emergency and the conditions and circumstances resulting therefrom were better known to the Fleet Corporation and to the complainant than they were to the defendant. Except as so specifically admitted,

it denies each and every averment of said Article Twenty-second.

Twenty-third: Answering Article Twenty-third of the bill of complaint, it admits that on or about December 13, 1917, it stated to the Fleet Corporation that because of the unprecedented conditions then surrounding the labor and material market, it was impracticable to estimate within a reasonable percentage what would be the actual cost of constructing the vessels which the Fleet Corporation then requested it to build, and that therefore it was impossible to submit fixed prices for such vessels except upon a basis so far above estimated cost that any figure acceptable to the defendant would not be acceptable to the Fleet Corporation. It admits that thereupon it suggested for the consideration of the Fleet Corporation that such vessels (except the troop ships subsequently covered by Contract No. 182) should be constructed for the Fleet Corporation on a basis for each such vessel of actual cost plus a fixed fee, with an agreed upon probable cost of such vessel which should be increased or decreased from time to time by the amounts of any increases or decreases of wages that should be approved by the Fleet Corporation, and by the net cost of any changes and extras ordered by the Fleet Corporation, the defendant to be paid in addition to the fixed fee one-half of any saving that might be made below such agreed upon probable cost as so increased or decreased. It admits that the contracts between the Fleet Corporation and the defendant, Exhibits 5 to 7, and 9 to 20, inclusive, hereto were drawn in accordance with such suggestion, but it avers that the form of such contracts was agreed

upon between the defendant and the Fleet Corporation openly and fairly and after investigation by competent officials of the Fleet Corporation of the merits of the various forms of contracts.

It avers that on or about December 19, 1917, it proposed to the Fleet Corporation certain figures to be agreed upon as the probable costs to be specified in such contracts Exhibits 5 to 7, and 9 to 12, inclusive, hereto; upon information and belief, that competent officers and employees of the Fleet Corporation checked such figures against lump sum prices at that time current for similar vessels, and otherwise; that the Fleet Corporation thereafter proposed to reduce such figures in every case and the defendant agreed to such reduction; and that such figures as so reduced and as so specified in such contracts were agreed upon by the defendant and the Fleet Corporation openly and fairly and without any representation whatsoever on the part of the defendant with respect thereto. It avers that such contracts, Exhibits 13 to 20, inclusive, hereto were replicas of the earlier contracts except that in each case the fixed fees and the figures of estimated cost were reduced by the Fleet Corporation in the later contracts.

Except as so specifically admitted, it denies each and every averment of said Article Twenty-third.

Twenty-fourth: Answering Article Twenty-fourth of the bill of complaint, it admits that the defendant was obligated to perform each and all of such contracts fairly and honestly in accordance with their terms and it avers that it did so perform

such contracts. Except as so specifically admitted it denies each and every averment thereof.

Twenty-fifth: Answering Article Twenty-fifth of the bill of complaint, it denies that it has any knowledge with respect to the averments thereof that during the period in which the contracts thereafter in the bill of complaint referred to were entered into, the Government of the United States, acting under its constitutional powers, had in other instances fixed and limited the profit to be made by other shipbuilders constructing similar ships under similar circumstances, and in the vicinity of the various shipbuilding plants so operated by the defendants, at a sum not to exceed ten per cent. (10%) of the actual cost thereof, and in many instances at a sum much less than ten per cent. (10%) of the actual cost thereof. Except as aforesaid, it denies each and every averment of said Article Twenty-fifth.

Twenty-sixth: Answering Article Twenty-sixth of the bill of complaint, it admits that on or about April 16, 1918, Charles M. Schwab, at the request of the President of the United States, entered upon the office of Director General of the Fleet Corporation and continued in that office until December 12, 1918.

It admits that during the time that Charles M. Schwab was Director General of the Fleet Corporation he was a stockholder and Chairman of the Board of Directors of the defendant Bethlehem Steel Corporation and that during such period Joseph W. Powell was a Vice-President of the defendant and, as such, in charge generally of the contracts between the defendant and the Fleet Corporation and of the performance thereof. It

admits that during such period Charles M. Schwab took no official action with regard to the shipbuilding contracts specified in the bill of complaint, and refrained from questioning the provisions of such contracts with respect to the fixed fee for profit and the sharing, as aforesaid, of the difference between the estimated cost and the actual cost of the vessels constructed thereunder. It also admits that the contracts between the defendant and the Fleet Corporation annexed hereto as Exhibits 15-22, inclusive, were made during the time that Charles M. Schwab was Director General, but prays that reference be made to the averments of Article Ninety-ninth hereof for a fuller explanation thereof.

Except as so specifically admitted, it denies each and every averment of said Article Twenty-sixth.

Twenty-seventh: Answering Article Twenty-seventh of the bill of complaint, it admits that during the time that Charles M. Schwab was Director General of the Fleet Corporation the defendant Bethlehem Steel Corporation, directly or indirectly, owned the capital stock of Bethlehem Steel Company, the defendant, Fore River and Union, and by virtue thereof had stock control of such corporations. Except as so specifically admitted, it denies each and every averment of said Article Twenty-seventh.

Twenty-eighth: Answering Article Twenty-eighth of the bill of complaint, it denies each and every averment thereof.

Twenty-ninth: Answering Article Twenty-ninth of the bill of complaint, it admits that on or about the dates specified therefor in said Article Twenty-

ninth the defendant and the Fleet Corporation made and entered into the contracts listed in said Article covering the construction by the defendant for the Fleet Corporation at the respective plants specified, of vessels of the number, type, and deadweight carrying capacity specified in said Article. The defendant admits that the nominal dates of some of such contracts do not represent the dates on which the terms of such contracts were concluded but avers that all of the essential terms of contracts numbered 177, 178, 179, 182, 183, 184, 191 and 196, dated December 31, 1917, were agreed upon by the parties thereto on or about January 3, 1918, and that, similarly, all the essential terms of contracts numbered 226, 230, 299, 300, 301, 312, 313 and 314, were agreed upon by the parties thereto, on March 18, 1918, as to contract numbered 226, on April 8, 1918, as to contract numbered 230, on April 30, 1918, as to contracts numbered 299, 300 and 301, and on May 15, 1918, as to contracts numbered 312, 313 and 314. Copies of all such contracts listed in said Article Twenty-ninth (without the plans and specifications therein referred to), marked Exhibits 5 to 22, inclusive, are hereto annexed and are made a part of this answer as if herein fully set forth, and the defendant prays leave to refer on the trial of this action to such plans and specifications. Except as so specifically admitted, it denies each and every averment of said Article Twenty-ninth.

Thirtieth: Answering Article Thirtieth of the bill of complaint, it admits the averments thereof.

Thirty-first: Answering Article Thirty-first of the bill of complaint, it admits that except for the differences in the figures of estimated actual cost

and fixed fees and excepting contract numbered 182, Exhibit 8 hereto, the terms and provisions of such contracts with respect to the price to be paid for the vessels covered thereby as embodied in Article XIX of each such contract are substantially similar, but the defendant prays reference to the contracts themselves for the exact terms and provisions thereof. Except as aforesaid, it denies each and every averment of said Article Thirty-first.

Thirty-second: Answering Article Thirty-second of the bill of complaint, it admits that contract numbered 465, Exhibit 22 hereto, differed from the others in that it placed a limit on the amount which should become payable to the defendant on account of savings. It admits that contract number 182, Exhibit 8 hereto, differed from the others in that it provided that the defendant should be paid the actual cost of constructing each vessel thereunder plus ten per cent. (10%) thereof for profit. It admits that such contracts numbered 465 and 182 covered the construction of vessels different in type from those covered by the other contracts and that such vessels were first intended as transports but were later changed to combined cargo and passenger vessels. Except as so specifically admitted, it denies each and every averment of said Article Thirty-second.

Thirty-third: Answering Article Thirty-third of the bill of complaint, it admits that at the time of the making and delivery of the contracts referred to in said Article and thereafter there was in fact no wage schedule adopted by the Shipbuilding Labor Adjustment Board in force at any one of the Navy

Yards specified in such contracts, respectively. It avers, however, that on January 3, 1918, there were wage schedules in force at the respective Navy Yards specified in such contracts which schedules had been approved by the Navy Yards District Wage Boards; that the Fleet Corporation had in November and December, 1917, ordered and directed the defendant to put such schedules into effect in its respective East Coast plants; that the words "as adopted by the Federal Adjustment Wage Board" were inserted in such contracts through mutual mistake and error; and that the parties to such contracts in using in Article XIX of each thereof the language which is quoted in said Article Thirty-third, intended to indicate and specify such wage schedules in force on January 3, 1918, at such respective Navy Yards. It avers further that throughout the performance of such contracts and in making changes in wage schedules and otherwise in making adjustments and payments under such contracts, the parties thereto mutually adopted and acted upon such intended meaning of such provision. Except as so specifically admitted, it denies each and every averment of said Article Thirty-third.

Thirty-fourth: Answering Article Thirty-fourth of the bill of complaint, it admits that at or near the completion of the vessels built under such cost plus fixed fee plus savings contracts, and thereafter, it requested payment from the Fleet Corporation of the amounts payable to it on account of savings and it admits that the Fleet Corporation paid to it an aggregate of $9,014,633.05 on account thereof. Except as to specifically admitted, it denies each and every averment of said Article Thirty-fourth.

Thirty-fifth: Answering Article Thirty-fifth of the bill of complaint, it admits that Exhibit A to the bill of complaint shows with respect to each of such cost plus fixed fee plus savings contracts the amount paid by the Fleet Corporation to the defendant on account of "half savings" as aforesaid, aggregating in the case of all such contracts $9,014,633.05. Except as so specifically admitted, it denies each and every averment of said Article Thirty-fifth.

Thirty-sixth: Answering Article Thirty-sixth of the bill of complaint, it admits that Exhibit B to the bill of complaint states the amounts paid by the Fleet Corporation to the defendant on account of the actual cost of the vessels built under the contracts listed in such Exhibit, the fixed fees specified in such contracts (except in the case of contract numbered 465); and the amounts paid by the Fleet Corporation to the defendant on account of such fixed fees, but it prays reference to Exhibit 1 hereto and to the averments of Articles Fifty-fourth to Seventy-third, inclusive, hereof for a true and correct statement of the transactions and accounts between it and the Fleet Corporation under such contracts.

It denies that it has any knowledge as to what the complainant concedes or does not concede with respect to the matters in said Article Thirty-sixth averred and denies that it has any knowledge as to the basis of the computations under the heads of "Maximum adjusted actual cost", "Surplus Material to be added to adjusted actual cost", "Maximum actual cost to be credited to shipbuilder",

and "Recoverable overpayment to shipbuilder on actual cost" referred to in said Article Thirty-sixth and said Exhibit B to the bill of complaint.

Except as so specifically admitted and except the averments with respect to which it has denied that it has any knowledge, it denies each and every averment of said Article Thirty-sixth.

Thirty-Seventh: Answering Article Thirty-seventh of the bill of complaint, it admits that in order to provide it with additional facilities with which to expedite the construction of vessels for the Fleet Corporation, it and the Fleet Corporation made and entered into the contracts and the Fleet Corporation made the authorizations referred to under the head of "Authority for Advance" in Exhibit C to the bill of complaint, and that under and pursuant to such contracts and authorizations the Fleet Corporation paid the amounts specified under the head of "Amounts Advanced" in such Exhibit C; but it prays reference to Exhibit 2 hereto and to the averments hereinafter set forth for a true and correct statement of the transactions and accounts thereunder. Copies of such contracts and authorizations, marked Exhibits 5, 23, 24, 25, 26, 27, 6, 28 and 21, respectively, are hereto annexed and are made a part hereof as if herein fully set forth, and the defendant avers that each and all thereof were made and given by the Fleet Corporation and each and every action thereunder was taken by such corporation, as principal and as the real party in interest thereunder and not as the agent of the complainant.

The defendant avers that at the direction and with the approval of the Fleet Corporation and in ac-

cordance with the terms and provisions of such contracts and authorizations, it provided at the plants specified in column A of Exhibit 2 hereto the special improvements and additional facilities covered by such contracts and authorizations at a cost to it of the amounts specified in column B of such Exhibit 2; that of said amounts the Fleet Corporation, in accordance with the terms and provisions of such contracts and authorizations, has paid to or on the order of the defendant the amounts specified in column C of such Exhibit 2; and that, although duly requested, the Fleet Corporation has failed and refused to pay to the defendant either the amounts specified in column D of such Exhibit 2 or the amounts specified in column E thereof.

The defendant further avers that upon the completion of such improvements and facilities covered by such contracts and authorizations, Exhibits 5, 23, 24, 25, 26, 27, 6 and 28 hereto, it entered into negotiations with the Fleet Corporation for the purchase from the Fleet Corporation of such improvements and facilities under and pursuant to the terms and conditions of such contracts and authorizations; that the Fleet Corporation at that time and from time to time thereafter, made appraisals of the value of such improvements and facilities and communicated the results thereof to the defendant, who, in turn, made estimates of the value to it of such improvements and facilities; that thereupon, after long negotiations during which the defendant was ready and willing to purchase such improvements and facilities at prices which to it at that time seemed reasonable and urged early action on the part of the Fleet Corporation, in February, 1920, it en-

tered into agreements with representatives of the Fleet Corporation for the purchase of such improvements and facilities, but the Board of Trustees of the Fleet Corporation repudiated the authority of such representatives and repudiated such agreements; that thereafter it entered into negotiations with the Construction Claims Board of the Fleet Corporation for the purchase of such improvements and facilities and made an offer of about One million three hundred thousand dollars ($1,300,000) therefor, which offer such Claims Board transmitted to the Board of Trustees of the Fleet Corporation with the recommendation that it be accepted but such Board of Trustees delayed consideration of such offer until the defendant, in view of changed conditions, withdrew the same; that thereafter and on or about September 15, 1921, the defendant notified the Fleet Corporation to remove the greater part of such improvements and facilities, but the Fleet Corporation requested extensions of time within which to begin the removal of such improvements and facilities and the defendant from time to time gave extensions of such time so long as negotiations between the defendant and the Fleet Corporation for the settlement of other controverted questions between them should be proceeding expeditiously; that the Fleet Corporation has long since terminated such negotiations and has abandoned all such improvements and facilities to the defendant.

Except as so specifically admitted, it denies each and every averment of said Article Thirty-seventh.

Thirty-eighth: Answering Article Thirty-eighth of the bill of complaint, it denies each and every averment thereof.

Thirty-ninth: Answering Article Thirty-ninth of the bill of complaint, except the averments thereof admitted by it in Article Thirty-seventh hereof, it denies each and every averment of said Article Thirty-ninth.

Fortieth: Answering Article Fortieth of the bill of complaint, it admits that after the issuance and service upon the defendants Bethlehem Steel Company, Fore River and Union and upon Harlan and Moore of the requisition orders of August 3, 1917, and on or about August 22, 1917, the Fleet Corporation ordered such respective corporations to complete the vessels covered by such requisition orders substantially in accordance with the plans and specifications provided by the original contracts for such vessels between such respective corporations and the purchasers or former owners thereof and agreed to pay for the work of such completion the amounts specified in such original contracts then unpaid, and it admits that such orders dated August 22, 1917, were accepted by such respective corporations on such condition and that the completion of such vessels was subsequently taken over by the defendant which completed such vessels and delivered the same to or on the order of the Fleet Corporation; but it refers to the averments of Articles Seventy-fifth and Seventy-sixth hereof set forth for a true and correct statement of the nature and effect of such transactions. Except as so specifically admitted, it denies each and every averment of said Article Fortieth.

Forty-first: Answering Article Forty-first of the bill of complaint, it admits that Exhibit D to the bill of complaint correctly lists the vessels included

in such requisition orders of August 3, 1917, and, to the extent that such figures are the same as those shown on Exhibit 3 hereto, the total amounts paid by the former owners and the Fleet Corporation to such corporations and the defendant on account of the construction of such vessels, but it refers to such Exhibit 3 for a correct statement of the transactions and accounts between the Fleet Corporation and such corporations and the defendant on account of the construction of such vessels. Except as so specifically admitted, it denies each and every averment of said Article Forty-first.

Forty-second: Answering Article Forty-second of the bill of complaint, it admits that the contracts under which such vessels were being constructed for private purchasers (except three) were on a lump sum basis and not on the basis of cost plus a percentage for profit and that the respective shipbuilding corporations were not entitled under such contracts to additional compensation for overtime work on such construction. Except as so specifically admitted, it denies each and every averment of said Article Forty-second.

Forty-third: Answering Article Forty-third of the bill of complaint, it admits that during the war the Government, in furtherance of the shipbuilding war program, directed that, with respect to all shipbuilding work carried on for the Government and for the Fleet Corporation, eight hours per day should constitute the normal time of employment for labor, and that for all labor employed over eight hours in any day a bonus at times of fifty per cent. (50%) and at other times of one hundred per cent. (100%) should be paid, and that all work on Sat-

urday afternoons, Sundays, and holidays should be deemed to be overtime and that with respect thereto a bonus of one hundred per cent. (100%) per hour should be paid, and it admits that the basis of compensation for such overtime is commonly known as "time and a half" and "double time" according as the bonus is fifty per cent. (50%) or one hundred per cent. (100%). Except as so specifically admitted, it denies each and every averment of said Article Forty-third.

Forty-fourth: Answering Article Forty-fourth of the bill of complaint, it admits that after the date of the requisition of the vessels under construction by the defendants Bethlehem Steel Company, Fore River and Union and Moore and Harlan and before the completion of such vessels was undertaken by the defendant, agreements were entered into between the Fleet Corporation and the defendants Bethlehem Steel Company, Fore River and Union and Moore and Harlan respectively, for the completion of such vessels as hereinafter in Article Seventy-fifth hereof set forth. It admits that subsequently and on or about November 1, 1917, the defendants Bethlehem Steel Company, Fore River and Union, respectively, entered into agreements with the defendant as hereinafter in Article Seventy-sixth hereof set forth. It admits that on or about October 1, 1917, Moore and Moore Shipbuilding Corporation entered into an agreement whereby the latter agreed as agent for Moore to complete the vessels under construction by Moore and included in such requisition order of August 3, 1917, and that upon the merger of Moore Shipbuilding Corporation and Harlan with the defendant all the as-

sets and liabilities of both such corporations, including the performance of all their executory contracts, were taken over by the defendant which thereby became obligated to complete the aforesaid vessels on behalf of Moore and to complete all contracts which Harlan was obligated to perform. It admits that thereafter and prior to the institution of this suit, Moore was dissolved and thereupon all its contractual obligations, including those relating to such vessels, were undertaken by the defendant. Except as so specifically admitted, it denies each and every averment of said Article Forty-fourth.

Forty-fifth: Answering Article Forty-fifth of the bill of complaint, it admits that during the period of construction of the vessels covered by such requisition orders Bethlehem Steel Company, Fore River, Moore, Harlan and Union and the defendant employed overtime in the construction thereof. Except as so specifically admitted, it denies each and every averment of said Article Forty-fifth.

Forty-sixth: Answering Article Forty-sixth of the bill of complaint, it admits that the various "overtime co-efficients" which were adopted and applied to overtime and which the Fleet Corporation agreed to pay as hereinafter in Article Eightieth hereof set forth, were arrived at as follows (the computations for convenience being reduced to units of a dollar):

"Time and a Half."

Shipbuilder pays workmen for overtime of two hours:

(a) At regular rate of $1 per hour (The shipbuilder is not reimbursed payments under (a) except to the extent that they are covered by lump sum prices.)	$2.00
(b) As overtime bonus for two hours at 50% of regular rate (reimbursed by Fleet Corporation)	1.00
Total paid by shipbuilder to workmen for overtime and bonus	$3.00

Shipbuilder receives from the Fleet Corporation under co-efficient of 2,625, the following:

(1) Overtime bonus, as above	$1.00
(2) Loss in workmen's efficiency ⅜ of normal rate of $1 an hour for two hours	.75
Total of factors (1) and (2)	$1.75
(3) For increase in overhead cost and decrease in overhead efficiency 50% of item No. 1 above plus 50% of item No. 2 above	.875
Total charged by shipbuilder to the Fleet Corporation for each two hours' overtime	$2.625

"Double Time."

Shipbuilder pays workmen for overtime of one hour:

(a) At rate of $1 per hour	$1.00

(b) Bonus paid double time per hour	1.00
Total paid by shipbuilder to workmen for overtime and bonus	$2.00

Shipbuilder receives under co-efficient of 1,8125, the following:

(1) Overtime bonus, as above	$1.00
(2) Loss in workmen's efficiency 3/8 per hour	.375
(3) *Increased overhead 50% (1/2 hour plus 3/8 of an hour)	.4375
Total	$1.8125

"Double Time on Sundays and Holidays."

Shipbuilder pays for each one hour overtime bonus	$1.00
No loss in efficiency.	
*Increased overhead 50% of one-half hour	.25
	$1.25

Except as so specifically admitted, it denies each and every averment of said Article Forty-sixth.

Forty-seventh: Answering Article Forty-seventh of the bill of complaint, it denies each and every averment thereof.

*The increased cost of overhead is figured on one-half of the actual number of overtime hours worked.

Forty-eighth: Answering Article Forty-eighth of the bill of complaint, it admits that from time to time it included in its statements to the Fleet Corporation on account of the "overtime co-efficients" the amounts specified in column K of Exhibit 3 hereto. Except as so specifically admitted, it denies each and every averment of said Article Forty-eighth.

Forty-ninth: Answering Article Forty-ninth of the bill of complaint, it admits that there were no provisions in any of the contracts referred to in the bill of complaint whereby the complainant was required to advance any moneys to the defendant as distinguished from the Fleet Corporation reimbursing the defendant for payments on account of the cost of construction of the vessels thereunder. It admits that on or about April 24 and June 14, 1918, the Fleet Corporation advanced to the defendant $3,000,000 and $5,000,000, respectively; in the aggregate $8,000,000. It admits that such $8,000,000 were deposited by the defendant in general accounts, mingled with its other funds and used as working capital in connection with the contracts between the defendant and the Fleet Corporation referred to in the bill of complaint. It admits that it collected from the banks in which such funds were deposited, interest on its daily balances. It avers that such advances were made by the Fleet Corporation to enable the defendant to expedite the construction of vessels then under construction by the defendant for the Fleet Corporation upon the understanding and agreement that the repayment of such advances should be effected by the deduction from time to time from amounts due from the Fleet Corporation

to the defendant on account of the construction of such vessels of amounts aggregating the amount of such advances, but without any agreement on the part of the defendant to pay any interest on account of such advances. The defendant further avers that such advances were repaid to the Fleet Corporation in such manner by deducting from moneys due and owing from the Fleet Corporation to the defendant on account of the construction of such vessels the amounts set forth in Exhibit 4 hereto; and that at the time of such repayments the Fleet Corporation did not make any claim or demand for the payment of any interest on account of such advances but effected and accepted repayment as aforesaid in complete satisfaction of the obligation of the defendant on account of such advances.

It admits that the advance of $5,000,000 thereof on June 14, 1918 was made during the period that Charles M. Schwab was Director General of the Fleet Corporation, and it admits that Charles M. Schwab took no part whatever in the negotiations between the defendant and the Fleet Corporation with respect to such advance to the defendant.

Except as so specifically admitted, it denies each and every averment of said Article Forty-ninth.

Fiftieth: Answering Article Fiftieth of the bill of complaint, it denies each and every averment thereof.

Fifty-first: Answering Article Fifty-first of the bill of complaint, it admits that controversies have arisen between it and the Fleet Corporation as to the proper construction and effect of the terms and provisions of the contracts referred to in Article

Thirty-second of the bill of complaint and particularly of Articles XVII and XIX of such contracts; and it admits that statements of accounts have been prepared and submitted by it. It admits that many items contained in its statements to the Fleet Corporation on account of the cost of such vessels were agreed to by the Fleet Corporation as proper charges or credits, as the case might be. It denies that it has any knowledge as to the exact number and nature of the items which the complainant and the Fleet Corporation now object to in such statements.

Except as so specifically admitted and except the averments with respect to which it has denied that it has any knowledge, it denies each and every averment of said Article Fifty-first.

Fifty-second: Answering Article Fifty-second of the bill of complaint, it denies each and every averment thereof.

Fifty-third: Answering Article Fifty-third, being advised that it is not required to admit or deny the conclusions of law in said Article pleaded, it neither admits nor denies the averments of said Article.

As a general defense to each and every claim of the complainant, and by way of explanation of the transactions, set forth in the Bill of Complaint, the defendant, hereby reiterating each and every denial and averment hereinbefore contained, further says:

The Contract Ship Program.

Fifty-fourth: On or about the dates, respectively, listed in column B of Exhibit 1 hereto, the defendant and the Fleet Corporation made and entered into

the contracts, respectively, listed in Column A of such Exhibit 1, copies of which marked, respectively, Exhibits 5 to 22, inclusive, are annexed hereto and are made a part hereof as if herein fully set forth. Such contracts are the same contracts listed in Article Twenty-ninth of the bill of complaint and were made by the Fleet Corporation, and each and every transaction thereunder was carried out by the Fleet Corporation, as principal and as real party in interest thereunder and not as the agent of the complainant. All of such contracts, other than contract numbered 182, Exhibit 8 hereto, which is a cost plus ten per cent. (10%) of cost contract, are cost plus fixed fee plus savings contracts.

Fifty-fifth: On or about February 11, 1919, the Fleet Corporation directed the defendant to suspend work on three of the cargo vessels, Hulls numbered 1685, 1686 and 1687, covered by contract numbered 301, Exhibit 17 hereto, and on or about August 19, 1919, directed the defendant to cancel such contract as to such three cargo vessels. In accordance therewith, the defendant without prejudice terminated the work on such vessels and thereafter without prejudice complied with all instructions of the Fleet Corporation in that connection.

Fifty-sixth: On or about August 19, 1919, the Fleet Corporation notified the defendant that contract numbered 312, Exhibit 18 hereto, was thereby cancelled and instructed the defendant that all work thereunder should be terminated, and thereupon without prejudice the defendant terminated all work under such contract and complied with the instructions of the Fleet Corporation in that connection.

Fifty-seventh: On or about April 25, 1919, the Fleet Corporation notified the defendant that contract numbered 313, Exhibit 19 hereto, was thereby cancelled and instructed the defendant that all work thereunder should be terminated, and thereupon without prejudice the defendant terminated all work under such contract and complied with the instructions of the Fleet Corporation in that connection.

Fifty-eighth: On or about October 15, 1918, the Fleet Corporation cancelled contract numbered 340, Exhibit 21 hereto, and terminated all work thereunder.

Fifty-ninth: On or about April 5, 1919, the defendant and the Fleet Corporation modified contracts numbered 182 and 465, Exhibits 8 and 22 hereto, so as to provide that the vessels covered thereby should be completed as combined passenger and cargo vessels in accordance with definite instructions to be issued by the Fleet Corporation. Thereafter the Fleet Corporation issued such instructions and the defendant in pursuance thereof completed such vessels (with the exception of the vessels work on which was terminated as hereinafter set forth) as combined passenger and cargo vessels.

Sixtieth: On or about August 24, 1920, the defendant received from the Fleet Corporation instructions to suspend work on three of such vessels, Hulls numbered 2508-2510, inclusive, covered by contract numbered 465, Exhibit 22 hereto, and on or about November 29, 1920, notified the defendant that it had on October 25, 1920, cancelled so much of such contract as related to the construction of such three vessels. In accordance therewith, the defendant

without prejudice suspended work thereon and thereafter without prejudice complied with all instructions of the Fleet Corporation in that connection.

Sixty-first: With the exception of the vessels covered by such contracts numbered 301, 312, 313, 340 and 465, work on which was terminated as hereinabove set forth, the defendant completed all of the vessels which by the terms and provisions of such contracts, Exhibits 5 to 22, inclusive, hereto, it agreed to construct for the Fleet Corporation, in accordance with the plans and specifications therefore referred to in such contracts with certain changes therein authorized by the Fleet Corporation in accordance with the terms and provisions of such contracts, and it delivered such vessels complete to or on the order of the Fleet Corporation on or before the dates specified in Column C of such Exhibit 1. The defendant duly performed all the terms and conditions of all such contracts (including the contracts cancelled in whole or in part as aforesaid) on its part to be performed and the Fleet Corporation took possession of and accepted such vessels as constructed in accordance with such plans and specifications and the terms and provisions of such contracts.

Sixty-second: While the defendant was engaged in the work of constructing the vessels under each such contract, the rate of wages actually paid by the defendant in the construction thereof was, by the direction of or with the approval of the Fleet Corporation, increased over the wages provided by the schedule referred to in Article XIX of such contract, and by reason thereof the labor cost actually

incurred by the defendant in the construction of such vessels was increased over the labor cost that would have been incurred by the defendant had such schedule remained in force during the whole period of the construction of such vessels. The aggregate amount by which the labor cost of such vessels actually incurred by the defendant was increased over the labor cost that would have been incurred if such schedule had remained in force during the period of the construction thereof was, as found on the audit made by the Fleet Corporation as hereinafter set forth, as set forth in column E of such Exhibit 1.

Sixty-third: From time to time, while the defendant was engaged in the work of constructing the vessels under each such contract, the Fleet Corporation under and pursuant to the terms of such contract ordered and directed that certain changes in the plans and specifications therein referred to be made, and such changes were made in accordance with the orders and directions of the Fleet Corporation given as aforesaid. The net amount by which the estimated cost of such vessels specified in Article XIX of such contract was increased or diminished by reason of such changes, as found on such audit, was as set forth in column F of such Exhibit 1.

Sixty-fourth: From time to time while the defendant was engaged in the work of constructing Hulls numbered 2505-2507, under contract numbered 465, the Fleet Corporation, under and pursuant to the terms of such contract, and in addition to the changes in the plans and specifications therefor resulting from the modification of such contract in

Article Fifty-ninth hereof mentioned, ordered and directed that certain other changes in such plans and specifications be made and such changes were made in accordance with the orders and directions of the Fleet Corporation given as aforesaid. By reason of all such changes made up to March 1, 1921, the estimated cost of each of such three vessels specified in Article XIX of such contract was increased in accordance with such Article XIX by more than the sum of One million four hundred forty thousand dollars ($1,440,000), and the fixed sum for profit for each of such three vessels specified in such Article XIX was in accordance with such Article XIX increased by more than the sum of One hundred five thousand dollars ($105,000). In view of such changes as aforesaid, and on or about April 8, 1921, the defendant and the Fleet Corporation made and entered into an agreement whereby it was agreed that the sum by which such estimated cost of each of such three vessels should be increased on account of all such changes made up to March 1, 1921, should be fixed at such sum of One million four hundred forty thousand dollars ($1,440,000), and that the sum by which such fixed sum for profit for each of such three vessels should be increased on account of such changes should be fixed at such sum of One hundred five thousand dollars ($105,000), and that the maximum amount to which the defendant might become entitled pursuant to such Article XIX, on account of any sum by which the actual cost of any such vessel should be less than the estimated cost thereof revised as in such Article XIX provided should be increased from Two hundred thousand dollars ($200,000) to Two hundred

fifty thousand dollars ($250,000). The net amount by which the estimated cost of such three vessels was increased in accordance with such Article XIX by such changes made after March 1, 1921, was One million one hundred eighty-three thousand seven hundred seventy-three dollars ($1,183,773). The net amount by which such fixed sum for profit for each of such three vessels was increased in accordance with such Article XIX by such changes made after March 1, 1921, was Thirty thousand three hundred fifty-three dollars and twelve cents ($30,353.12). The net amount by which the estimated cost of such three vessels was increased by reason of all such changes in this paragraph mentioned as found on such audit, aggregated at least Five million five hundred three thousand seven hundred seventy-three dollars ($5,503,773). The net amount by which such fixed sum for profit for each of such three vessels was increased in accordance with such Article XIX by reason of all such changes aggregated at least the sum of One hundred thirty-five thousand three hundred fifty-three dollars and twelve cents ($135,353.12).

Sixty-fifth: From time to time during the period of the construction of such three vessels, Hulls numbered 2505-2507, the prices of materials used in the construction of such three vessels were less than the prices specified in Exhibit A to such contract numbered 465, while freight rates were from time to time increased over the rates in force at the time such contract was made. The net amount by which the estimated cost of such three vessels was in accordance with such contract decreased by reason of such decreases in such prices of materials and such

increases in such freight rates was, as found on such audit, One hundred eighty-seven thousand nine hundred eighty dollars and sixty-eight cents ($187,980.68).

Sixty-sixth: After the completion and delivery by the defendant of the vessels covered by each such contract and the acceptance thereof by the Fleet Corporation as aforesaid, a complete audit of the total cost of such vessels and of the vessels work on which was terminated as hereinabove set forth, and (except in the case of contract numbered 182, Exhibit 8 hereto) of the revised estimated cost thereof, as provided in Article XIX of each such contract, was made by the Fleet Corporation and completed on or about September 1, 1922, and (with the exception of the items of such cost hereinafter in Article Sixty-seventh hereof mentioned) the aggregate amount of the various items of cost and expenditures incurred by the defendant in the construction of the vessels under each such contract, determined in accordance with Article XVII of such contract and the revised estimated cost thereof were found by the Fleet Corporation upon such audit to be, and approved by it, as set forth in column H and column G, respectively, of such Exhibit 1.

Sixty-seventh: In addition to the items of cost so audited and so found and approved by the Fleet Corporation, the defendant incurred other items of cost in the construction of and on account of such vessels and within the description of the items of cost of such vessels by the provisions of Article XVII of each such contract agreed to be paid to the defendant as part of the actual cost of such ves-

sels, the aggregates of which are as set forth in column I of such Exhibit 1. The actual cost of the vessels under each such contract, determined in accordance with the terms and provisions of such contract, was as set forth in column J of such Exhibit 1.

Sixty-eighth: Under and pursuant to the provisions of Article XVIII of each such contract, all materials and supplies purchased for but not used in the construction of the vessels covered thereby became and remained the property of the Fleet Corporation and the value of such materials and supplies was determined by the Fleet Corporation on such audit. Such materials and supplies, instead of the value thereof being credited on the cost of such vessels were at the request of the Fleet Corporation delivered to it by the defendant, and by reason thereof the actual cost of such vessels was for the purpose of determining savings (or, in the case of contract numbered 182, profit), reduced by the amount of the value of such materials and supplies as found by the Fleet Corporation on such audit, as set forth in column K of such Exhibit 1.

Sixty-ninth: The amount of the difference between the revised estimated cost of the vessels under each such contract (column G) and the actual cost thereof reduced as aforesaid by the value of such surplus materials and supplies (column K), herein called savings, is as set forth in column L of such Exhibit 1. Such amount will be increased in the case of each such contract in the event, and to the extent, that the actual cost of the vessels thereunder shall be determined to be less than the

amount of the actual cost thereof set forth in column J of such Exhibit 1.

Seventieth: The aggregate of the fixed fees specified in, or calculated in accordance with, each such contract, is as set forth in column M of such Exhibit 1.

Seventy-first: The amounts which became payable from the Fleet Corporation to the defendant on account of savings under such contracts are as set forth in column N of such Exhibit 1.

Seventy-second: During the period of construction of the vessels under each such contract, and under and pursuant to the terms and provisions of such contracts, the defendant kept elaborate accounts of the cost of construction of such vessels and the Fleet Corporation from time to time checked such accounts. During and just after such period, upon its check of the defendant's accounts and as required by such contract, the Fleet Corporation paid the cost of construction (except certain costs disallowed by it) of such vessels and the greater part of the fixed fees specified therein. Upon the completion of such vessels, the Fleet Corporation made a complete audit of such accounts as hereinabove in Article Sixty-sixth hereof set forth and paid to the defendant a part of the amounts payable to it on account of savings. The amounts so paid by the Fleet Corporation to the defendant on account of such actual costs, such fixed fees and such savings are as set forth in columns O, P and Q, respectively, of such Exhibit 1.

Seventy-third: Although duly requested, the Fleet Corporation has failed and refused to pay the

amounts of such actual costs, such fixed fees and such savings set forth in columns R, S, T and U respectively, of such Exhibit 1. Such amounts, together with interest thereon from September 1, 1922, are now due and owing from the Fleet Corporation to the defendant.

The Requisitioned Ship Program.

Seventy-fourth: On or about the dates, respectively, listed in column C of Exhibit 3 hereto, the shipbuilders, respectively, listed in column A thereof and the former owners, respectively listed in column B thereof, made and entered into written contracts covering the construction of the vessels listed in column D thereof. Copies of such contracts (hereinafter called the original contracts), without the plans and specifications therein referred to, marked Exhibits 29 to 72, inclusive, respectively, are annexed hereto and are made a part hereof as if herein fully set forth, and the defendant prays leave to refer on the trial of this action to such plans and specifications.

Seventy-fifth: Upon the requisition of such vessels as in Article Fifteenth hereof set forth, and on or about the dates respectively specified in column G of such Exhibit 3, the shipbuilders listed in column A thereof, respectively, and the Fleet Corporation, acting as principal and not as agent of the complainant, entered into contracts in writing whereby such shipbuilders agreed to complete such vessels for the Fleet Corporation in conformity with the requirements of the original contracts and the plans and specifications therein referred to in so far as the original contracts describe such vessels, the

materials, equipment, outfit, workmanship, insurance, classification and survey thereof, including the meeting of the requirements of the original contracts and all tests as to efficiency and capacity of the vessels on completion, and in so far as the original contracts contain provisions of the benefit and protection of the former owners, but not otherwise; and on final acceptance of each such vessel, to give a bill of sale to the United States in satisfactory form conveying all the right, title and interest of the shipbuilder in such vessel, together with its certificate that such vessel was then free from liens, claims or equities with the exception of those of the former owner, and then only those set forth in the original contract therefor; and whereby the Fleet Corporation agreed that it would pay to the shipbuilders for the work of such completion, amounts equal to the payments set forth in the original contracts and not then paid. The Fleet Corporation also agreed that upon the completion of such vessels under each such contract a complete audit of the items which should go to make up the price of such vessels would be made by the Fleet Corporation and that thereupon the balance determined to be due on such vessels should become immediately due and payable. Each and every action taken by the Fleet Corporation under such contracts between it and such shipbuilders in this Article mentioned was taken by it as principal and as the real party in interest thereunder and not as the agent of the complainant, and Fore River, Moore, Harlan, Bethlehem Steel Company, Union and the defendant at all times dealt with such corporation thereunder solely on such basis.

Seventy-sixth: Thereafter, and on or about November 1, 1917, the defendant leased the shipyards of Fore River and Union and acquired the shipyard operated by Bethlehem Steel Company at Sparrows Point, Maryland, and, at the same time, made and entered into agreements with Fore River, Union, and Bethlehem Steel Company, respectively, whereby the defendant became obligated as their agent to perform all of their original contracts listed in such Exhibit 3, and became entitled to the benefits theretofore accrued and thereafter to accrue under such contracts; and the defendant, with the approval of the Fleet Corporation, took over and proceeded with the completion of the vessels covered by such contracts, in accordance with the terms and provisions of the contracts between such corporations and the Fleet Corporation in Article Seventy-fifth hereof set forth.

Seventy-seventh: Moore Shipbuilding Corporation and Harlan were merged into the defendant on or about October 15, 1917, and the defendant thereby became obligated to perform all of the original contracts of Moore and Harlan listed in such Exhibit 3, and, similarly, became entitled to the benefits theretofore accrued and thereafter to accrue under such contracts, and the defendant, with the approval of the Fleet Corporation, took over and proceeded with the completion of the vessels covered by such contracts, in accordance with the terms and provisions of the contracts between Moore and Harlan and the Fleet Corporation in Article Seventy-fifth hereof set forth.

Seventy-eighth: Thereafter, and on or about the 28th day of January, 1919, in consideration of an

agreement on the part of the Fleet Corporation to pay to the defendant for the work of constructing Hulls numbered 264, 265 and 267, the cost thereof plus ten dollars ($10) per ton deadweight capacity of such vessels, the defendant agreed to reduce the percentage of cost which the Fleet Corporation should pay to the defendant for profit for constructing Hulls numbered 297 and 298, from twenty-five per cent. (25%) to fifteen per cent. (15%).

Seventy-ninth: On or about the 28th day of February, 1918, the defendant and the Fleet Corporation entered into an agreement whereby they agreed to modify the provisions of the contracts covering the construction of Hulls numbered 442, 445, 446, 449, 134 and 135 with reference to the price to be paid by the Fleet Corporation for the work of completing such vessels so that such contracts should provide that the price which the Fleet Corporation would pay for such work should be the cost to the defendant of constructing the same, plus a profit of ten dollars ($10) per ton deadweight capacity of such vessels, and in consideration of the agreement by the defendant so to modify such contracts the Fleet Corporation agreed that it would pay to the defendant for such work such cost plus such profit of ten dollars ($10) per ton deadweight capacity of such vessels.

Eightieth: Thereafter, from time to time, the Fleet Corporation directed the defendant to employ overtime in the construction of Hulls numbered 268, 269, 272, 273, 115-116, 453-458, 169-170, 172-175, 143-149, 154 and 162-169, inclusive, and on or about the 11th day of January, 1918, agreed that it would pay

to the defendant in respect of such overtime, in addition to all other payments theretofore agreed to be paid on account of such vessels, amounts equal to 1.8125, in the case of Hulls numbered 115-116, and 2.625, in the case of the remainder of such vessels, (called the "overtime co-efficient") times the bonus (i. e. the excess of wages at overtime rates as established from time to time under governmental direction over wages at regular rates so established) paid by the defendant to its employees in respect of such overtime. Thereafter, the defendant at its Union plant with the approval of the Fleet Corporation changed the basis of payments for week-day overtime in the construction of such vessels at such plant from time-and-a-half to doubletime and in addition, with like approval, used a substantially greater amount of Sunday and holiday time in the construction of such vessels than it had theretofore used, whereupon the defendant and the Fleet Corporation agreed that the Fleet Corporation would pay to the defendant in respect of all such overtime whether theretofore, or thereafter to be, employed by the defendant in the construction of such vessels at the direction of the Fleet Corporation, at the rate of 2.625 times such bonus for time and-a-half overtime, 1.8125 times such bonus in respect of week-day double-time overtime and 1.25 times such bonus in respect of Sunday and holiday double-time overtime. The defendant in accordance with such agreements and at the direction of the Fleet Corporation, from time to time, employed overtime in the construction of such vessels and in that connection paid to its employees bonuses the aggregates of which times the applicable overtime co-efficent

amounted to the sums set forth in column K of such Exhibit 3 hereto.

Eighty-first: Thereafter, and on or about June 17, 1918, the defendant and the Fleet Corporation entered into an agreement, whereby the Fleet Corporation agreed to reimburse the defendant, on the terms and conditions therein set forth, for certain payments which, to expedite the completion of Hulls numbered 453-456 and 169-170, 172-175, inclusive, the defendant proposed to make to its foremen, assistant foremen, leading men and other heads of departments. The amounts which were so paid by the defendant and which the Fleet Corporation agreed to reimburse to the defendant as aforesaid, are as set forth in column L of such Exhibit 3.

Eighty-second: From time to time during the period of construction of Hulls numbered 268, 269, 272, 273, 115-116, 453-458, 163, 167, 169-170, 172-175, 140, 142, 143-149, 154, and 162-169, inclusive, the former owners, and, later, the Fleet Corporation, under and pursuant to the terms of the contracts therefor, directed that certain additions to and omissions from the plans and specifications therefor be made and such additions to and omissions from such plans and specifications were made in accordance with the orders and directions of the former owners, and, later, the Fleet Corporation as aforesaid. The net cost of such additions and omissions, which by the provisions of each such contract it was agreed should be added to the price of such vessels was as set forth in column J of such Exhibit 3.

Eighty-third: From time to time during the period of construction of Hulls numbered 169-170 and 174-

175, inclusive, the rates of wages paid by Bethlehem Steel Company and later, by the defendant in the construction of such vessels exceeded by more than ten per cent. (10%) the rates of wages which were paid by said Bethlehem Steel Company at the date of the original contracts therefor, Exhibits 51-52 and 55-56, inclusive, hereto. Sixty cents ($0.60) per deadweight ton for each one per cent. (1%) so paid in excess of ten per cent. (10%) over the rates of wages at the date of such contracts, respectively, paid by Bethlehem Steel Company amounted to the sums specified in column M of such Exhibit 3.

Eighty-fourth: In the case of Hulls numbered 272-273, 169-170, 173 and 174-175, inclusive, the original contracts therefor provided that the purchaser would pay to the shipbuilder for each ton that the deadweight carrying capacity of each such vessel should exceed the guaranteed deadweight carrying capacity thereof, respectively, the amounts specified in such contracts. Upon the completion of such vessels they, respectively, had the deadweight carrying capacity specified in column F of such Exhibit 3 and there became due from the Fleet Corporation to the defendant on account thereof the amounts specified in column N of such Exhibit 3.

Eighty-fifth: On or about the 4th day of November, 1917, the Shipbuilding Labor Adjustment Board made an award whereby it, among other things, ordered and directed the employers of labor in the shipyards of the San Francisco Bay District (in which the shipyard of Union was located) to place in effect certain rules as to conditions of employment including a schedule of minimum wages, re-

troactive to September 22, 1917, and on or about the 24th day of November, 1917, the Fleet Corporation ordered and directed the defendant immediately to put into effect, at such shipyard, the schedule of wages so ordered and directed by such Adjustment Board. On or about the 10th day of December, 1917, the Fleet Corporation notified the defendant that the Fleet Corporation would pay, effective on and after December 15, 1917, a war service payment of ten per cent. (10%) to all employees of the defendant at such shipyard who should work six consecutive days in any week, the payments to be computed on straight time at the minimum rate provided in such award of such Adjustment Board, and that the Fleet Corporation would reimburse the defendant for such payments made by the defendant, and also for the increases in wages paid by the defendant by reason of such award of such Adjustment Board first above mentioned. From time to time thereafter the Fleet Corporation notified the defendant of revisions in the adjustment of wages, hours and conditions of labor in shipbuilding plants and directed the defendant to place such revisions in effect in such shipyard, in each case agreeing to reimburse the defendant in full for all such war service payments and all payments made on account of such increases in wages directed by such award of such Adjustment Board, as from time to time revised. Thereafter, and on or about February 1, 1918, the Fleet Corporation directed the defendant to pay said war service payment as a part of the regular wages of its employees in addition to the wages provided by the awards of such Adjustment Board. Thereafter, the

Fleet Corporation ordered and directed certain increases in the wages paid piece-workers at such shipyards, and on or about April 23, 1918, agreed to reimburse the defendant for such increases in the wages of piece-workers authorized by it. Thereafter, and on or about the 24th day of October, 1918, such Adjustment Board ordered and directed certain additional increases in the wages of employees employed in the shipyards on the Pacific Coast, retroactive to August 1, 1918, and on or about November 5, 1918, the Fleet Corporation ordered and directed the defendant to place such schedule in effect in such shipyard and agreed to reimburse the defendant for added wage costs incurred thereby. In the months of November and December, 1917, the Fleet Corporation directed the defendant to put into effect in its East Coast plants, namely, its Fore River, Moore, Harlan and Sparrows Point plants, on all requisitioned vessels, the rates of wages then prevailing at the respective Navy Yards nearest thereto. Thereafter, and on various dates, to wit, on February 14, 1918, for the Harlan and Sparrows Point plants, on March 1, 1918, again for the Sparrows Point plant, on April 6, 1918, for the Fore River and Moore plants, and on October 24, 1918, again for all four plants, the shipbuilding Labor Adjustment Board increased the rates of wages payable to labor engaged in ship construction at such plants and the Fleet Corporation ordered and directed the defendant to put into effect such increased rates and agreed to reimburse the defendant for the increased cost of labor incurred on account thereof. The increased cost of labor actually incurred by the defendant in the construction of Hulls

numbered 268, 269, 272, 273, 115, 116, 453-456, 457, 458, 140, 142-149, 172, 173, 154 and 162-169, inclusive, pursuant to the aforementioned orders and directions of the Fleet Corporation and for which the Fleet Corporation agreed to reimburse the defendant as aforesaid, was as set forth in column M of such Exhibit 3.

Eighty-sixth: The defendant completed the vessels listed in column D of such Exhibit 3 in accordance with the plans and specifications therefor and delivered such vessels complete in accordance with the orders of the Fleet Corporation afloat at the respective shipyards listed in such Exhibit on or about the dates therein listed, and the Fleet Corporation thereupon took possession of and accepted such vessels. The defendant duly performed all the terms and conditions of all the contracts therefor on its part to be performed, and the Fleet Corporation took possession of and accepted such vessels as constructed in accordance with such plans and specifications and in accordance with the terms and conditions of such contracts.

Eighty-seventh: In addition to the materials which entered into the construction of Hulls numbered 297 and 298 the cost of which was paid directly by Fore River and the defendant, there were other materials which entered into the construction of such vessels which were obtained for Fore River and the defendant by Luckenbach, the former owner, from other contractors, the cost of which aggregating Two hundred thirty-three thousand six hundred dollars ($233,600) was paid by said Luckenbach direct to such contractors, so that the total

actual cost of constructing Hulls numbered 297 and 298, determined in accordance with the provisions of such contracts, Exhibits 36 and 37 hereto, was Five million two hundred twenty-five thousand three hundred thirty-nine dollars and thirty-one cents ($5,225,339.31).

Eighty-eighth: Upon the completion and delivery of Hulls numbered 297 and 298, the defendant purchased from the Fleet Corporation certain surplus materials left over from the materials used in constructing such vessels for the sum of Thirty-two thousand one hundred ninety-six dollars and forty-two cents ($32,196.42), and the defendant agreed that, for the purpose of determining the profit payable in respect of the construction of such vessels, there should be deducted from the total cost of constructing the same such sum of Thirty-two thousand one hundred ninety-six dollars and forty-two cents ($32,196.42), thus reducing such total actual cost for such purpose to the sum of Five million one hundred ninety-three thousand one hundred forty-two dollars and eighty-nine cents ($5,193,142.89).

Eighty-ninth: After the completion and delivery of the vessels under each such contract and the acceptance thereof by the Fleet Corporation, a complete audit of the items of cost incurred in the construction of such vessels was made by the Fleet Corporation and completed on or about the first day of September, 1922. On such audit the Fleet Corporation found the amounts which had become payable by it to the defendant on account of the construction of such vessels to be as set forth in

columns I, J, K, L, M, N, O, P and Q of such Exhibit 3.

Ninetieth: From time to time during and after the period of construction thereof, the former owners, and, later, the Fleet Corporation, paid to the shipbuilders and, later, to the defendants, amounts on account of the construction of such vessels, the aggregates of which are as set forth in column R of such Exhibit 3.

Ninety-first: Although duly requested, the Fleet Corporation has failed and refused to pay the amounts due from and unpaid by the Fleet Corporation to the defendant on account of the construction of such vessels, set forth in column S of such Exhibit 3. Such amounts together with interest thereon from September 1, 1922, are now due and owing from the Fleet Corporation to the defendant.

Delay in Making Audits.

Ninety-second: The making of the audit of the total cost of the vessels under each such contract listed in Exhibits 1 and 3 hereto, as hereinabove in Articles Sixty-sixth and Eighty-ninth hereof set forth, was unreasonably delayed by the Fleet Corporation through no fault of the defendant beyond the date when such audit, pursuant to the agreement therefor, should have been made to the defendant's damage in each such case, as set forth in Exhibit 4-A hereto.

Miscellaneous Items.

Ninety-third: During the reaudits hereinabove in Articles Sixty-sixth and Eighty-ninth hereof men-

troned, the Fleet Corporation on its own responsibility, employed Perley Morse and Company, a firm of accountants, to audit certain of the accounts of the defendant under certain of the contracts herein set forth and paid to such firm more than Ninety thousand nineteen dollars and fifty-five cents ($90,019.55) therefor. Thereafter, the Fleet Corporation arbitrarily and without any agreement or liability of the defendant to pay therefor deducted such amount of Ninety thousand nineteen dollars and fifty-five cents ($90,019.55) from an undisputed balance due from the Fleet Corporation to the defendant on a certain contract between them covering the construction of certain propelling machinery, a copy of which contract, marked Exhibit 73, is annexed hereto and is made a part hereof as if herein fully set forth. The defendant completed such equipment in accordance with the terms and provisions of such contract and delivered the same on or before February 1, 1921, and duly performed all the terms and conditions of such contract on its part to be performed. The Fleet Corporation in accordance with the terms and provisions of such contract paid for such equipment except such sum of Ninety thousand nineteen dollars and fifty-five cents ($90,019.55), which sum, although duly requested, it has failed and refused to pay to the defendant. Such sum is now due from the Fleet Corporation to the defendant with interest thereon from February 1, 1921.

Ninety-fourth: On or about February 18, 1918, the defendant, The Pusey & Jones Company, a Delaware corporation, and the Fleet Corporation entered into an agreement, whereby the defendant and

said The Pusey & Jones Company agreed to lease certain land belonging to The Pennsylvania Railroad Company in Wilmington, Delaware, and to erect barracks thereon to provide housing facilities for United States Troops on guard duty at the shipyards of the defendant and of said The Pusey & Jones Company at Wilmington, Delaware; and the Fleet Corporation agreed to reimburse the defendant and said The Pusey & Jones Company for the expense thereof. Thereafter the defendant and said The Pusey & Jones Company leased such land from the Pennsylvania Railroad Company and constructed such barracks thereon in accordance with plans approved by the War Department of the United States of America, and the Fleet Corporation reimbursed the defendant and said The Pusey & Jones Company from time to time for the expenditures made, both as rental for such land and for the cost of construction of such barracks. By the terms of the agreement of lease of such land it was provided, among other things, that upon the termination of such agreement of lease the lessees would remove from such land the buildings erected thereon and restore such land to its original condition. After the termination of such agreement of lease, in the latter part of the year 1919, the Fleet Corporation, in accordance with the terms thereof, removed such barracks and on or about March 29, 1920, entered into an agreement with the defendant whereby the defendant agreed to provide for the restoration of said land and the Fleet Corporation agreed to reimburse the defendant for the cost thereof. In accordance with such agreement, and at the direction and with the approval of the Fleet Corpo-

ration, the defendant procured the restoration of such land to its original condition at a total cost to the defendant of Two thousand five hundred and seventy dollars ($2,570). Upon the restoration thereof, there became due from the Fleet Corporation to the defendant the sum of Two thousand five hundred and seventy dollars ($2,570), no part of which has been paid, although duly demanded, which sum is now due and owing to the defendant from the Fleet Corporation, with interest thereon from June 1, 1920.

As a separate and special defense to each and every claim of the complainant based upon the averments of Articles Twenty-sixth, Twenty-seventh, Twenty-eighth, Twenty-ninth and the last sentence of Article Forty-ninth of the Bill of Complaint, the defendant, hereby reiterating each and every denial and averment hereinbefore contained, and not waiving but insisting upon the defenses hereinbefore pleaded, but in addition thereto, says:

Ninety-fifth: At the instance of the United States Shipping Board, and especially of Edward N. Hurley, its Chairman, and Bainbridge Colby, one of its members, Charles M. Schwab was invited by President Wilson to become Director General of the Fleet Corporation at a time of an acute crisis in its affairs and for the special purpose of speeding up its ship construction program. Mr. Schwab objected to accepting the appointment, giving as one reason that he could be of more service as the head of the Bethlehem enterprises, and as a second reason that he could not entirely divest himself of his relations with Bethlehem. He was assured, however, by President

Wilson and Messrs. Hurley and Colby that he need have no fear on account of his relations with Bethlehem, and he finally yielded to their urgings upon the express understanding and agreement that while Director General of the Fleet Corporation he was not to participate in any way in transactions between the Fleet Corporation and the defendants herein.

Ninety-sixth: In pursuance of such understanding and agreement and promptly after taking office, he wrote to the President and Trustees of the Fleet Corporation a letter, of which the following is a copy:

"April 30, 1918.

"To the President and Trustees of the
United States Shipping Board Emergency
Fleet Corporation:

Dear Sirs:

The United States Shipping Board Emergency Fleet Corporation, of which I have been appointed Director General, has, or may in the future have, contracts or other business relations not only with the Bethlehem Steel Corporation, of which I am an officer, director and stockholder, but also with certain of its subsidiary companies in which I am directly or indirectly interested.

I am of the opinion that it would be inadvisable for me to participate, as such Director General, in the transaction of any business between the Emergency Fleet Corporation and any of

the said companies, with special reference to the making of contracts with, or the giving of orders to, such companies, and, therefore, request that all business between the United States Shipping Board Emergency Fleet Corporation and the companie named below may be handled entirely by such other officers or agents of the Emergency Fleet Corporation as you may designate.

Bethlehem Steel Corporation,
Bethlehem Steel Company,
Bethlehem Steel Bridge Corporation,
Bethlehem Loading Company,
Fore River Shipbuilding Corporation,
The Detrick & Harvey Machine Company,
Bethlehem Steel Products Company,
Ore Steamship Corporation,
Saucon Land & Improvement Company,
Bethlehem Securities Company,
Bethlehem Shipbuilding Corporation, Ltd.,
Union Iron Works Company,
Union Iron Works Dry Dock Company.

Yours very truly,

CE-MS (Sgd) C. M. Schwab."

Ninety-seventh: Immediately thereafter, on May 2, 1918, in accordance with said understanding and agreement, the Board of Trustees of the Fleet Corporation formally incorporated such letter into their minutes, and at the same time by resolution provided that all contracts before execution should be submitted to such Board for their approval. A copy of such resolution is as follows:

"Resolved that all contracts of the United States Shipping Board Emergency Fleet Corporation, after they are approved by the Vice-President and Secretary, whether for the Operating or Construction Divisions, be submitted to the Board of Trustees for their approval and then approved by the officers of the Corporation authorized by the Board of Trustees and formally executed."

Charles M. Schwab was never at any time a member of the Board of Trustees of the Fleet Corporation.

Ninety-eighth: Charles M. Schwab faithfully carried out said understanding and agreement and did not at any time take any part in the relations between the Fleet Corporation and any of the defendants herein.

Ninety-ninth: All of the contracts between the Fleet Corporation and the defendant listed in Article Twenty-ninth of the bill of complaint and in Exhibit 1 hereto, with the exception of contracts numbered 299, 300, 301, 312, 313, 314, 340 and 465, were agreed upon and signed before Mr. Schwab entered upon his duties as Director General of the Fleet Corporation. Of the exceptions, contracts numbered 299, 300, 301, 312, 313 and 314, Exhibits 15-20, inclusive, hereto, were simply replicas of earlier contracts, except that the fixed fees and estimated costs specified in such later contracts were lower than the fixed fees and estimated costs fixed in such earlier contracts. Three of such contracts, to wit, numbers 312, 313 and 340, Exhibits 18, 19 and 21

hereto, were cancelled and therefore are not involved in the claim of the complainant that Charles M. Schwab should have modified all such contracts. The remaining exception, contract numbered 465, Exhibit 22 hereto, was dated July 15, 1918, but, as in the case of all such other contracts, Charles M. Schwab had nothing to do with the negotiation of such contract.

One Hundredth: Finally, the vessels covered by the contracts so listed in Article Twenty-ninth of the bill of complaint and in Exhibit 1 hereto were of unusual design and required a comparatively long period of time for the construction thereof, and during the time that Charles M. Schwab was Director General of the Fleet Corporation such vessels had not been sufficiently completed for any one to estimate with any degree of accuracy what the ultimate cost of such vessels would be.

As a further separate and special defense to each and every claim of the complainant set forth in the Bill of Complaint, the defendant, not waiving but insisting on the defenses hereinbefore pleaded, but in addition thereto, repeats by reference all and singular the averments therein made, and says:

One Hundred First: Upon the completion and delivery of the vessels under each of the contracts referred to in Exhibits 1 and 3 hereto, and the completion of the special improvements and additional facilities under each of the contracts and authorizations referred to in Exhibit 2 hereto, the defendant prepared and submitted to the Fleet Corporation statements of account showing the balances due and

unpaid by the Fleet Corporation on account of such vessels and special improvements and plant facilities. At the same time the Fleet Corporation undertook and thereafter proceeded with the audits of the defendant's accounts hereinabove in Articles Sixty-sixth and Eighty-ninth hereof mentioned, and the defendant cooperated with and offered every assistance to the Fleet Corporation in making such audits and presented to the Fleet Corporation all of its claims on account of all the transactions herein set forth.

One Hundred Second: Upon the completion of such audits the Fleet Corporation referred all of the claims of the defendant to the Honorable William Marshall Bullitt, one of its special counsel, for consideration and report thereon, and the defendant again presented its claims to said Bullitt and made various offers of compromise to the Fleet Corporation with a view to effecting a speedy settlement of its claims substantially in accordance with Exhibits 1, 2, 3 and 4A hereto.

One Hundred Third: On information and belief, the defendant avers that thereafter and in the month of February, 1923, said Bullitt made his report on such claims and that in such report he found the net amount due from and unpaid by the Fleet Corporation to the defendant on account of the transactions herein set forth to be several millions of dollars.

One Hundred Fourth: Thereupon the Fleet Corporation ignored the report of said Bullitt and formally notified the defendant that the United States Shipping Board had approved the recommendation of the Standing Committee on Claims of the

Fleet Corporation that the Fleet Corporation did not owe the defendant anything on account of the transactions herein set forth, but that, on the contrary, the defendant owed the Fleet Corporation upwards of Eleven million dollars ($11,000,000).

One Hundred Fifth: At no time during such audits and such hearings before Bullitt was there any suggestion by the Fleet Corporation, or by any of the members of the United States Shipping Board, that there was any fraud in any of the transactions herein set forth, or that any overpayments on account of such transactions had been made through mistake of fact or of law, although by reason of such audits of the defendant's accounts from time to time during the construction and after the completion of such vessels, the Fleet Corporation was in a position to know all of the material facts with respect thereto, and the defendant had made a full disclosure to the Fleet Corporation of all such facts, and the Fleet Corporation and the United States Shipping Board unreasonably and unseasonably delayed to the prejudice of the defendant this action.

One Hundred Sixth: Further answering the bill of complaint, and in lieu of motions to dismiss the bill of complaint or parts thereof before answer, the defendant says that the complainant is not entitled to recover of the defendant or of any of the defendants in this action because it has not stated facts sufficient to constitute a valid cause of action in equity against the defendants or any of them, and the complainant is not the proper party to bring this action.

Claim for Credit.

One Hundred Seventh: Not waiving but insisting on the defenses pleaded in the foregoing answer, but in addition thereto, the defendant repeats and reavers the averments contained in Articles Thirty-seventh, Fifty-fourth to Ninety-fourth, inclusive, and One Hundred First to One Hundred Fourth, inclusive, hereof set forth with the same force and effect as if herein again averred in full, and says that if the complainant shall be found entitled to bring this action in its own name and to recover therein, any amount or amounts to which the complainant may become entitled on account of any of the transactions herein set forth should be reduced by the amounts now due and owing to the defendant on account of such transactions as hereinbefore set forth, so that the complainant should recover nothing.

Counterclaim.

One Hundred Eighth: Not waiving but insisting on the defenses pleaded in the foregoing answer, but in addition thereto, the defendant repeats and reavers the averments contained in Articles Thirty-seventh, Fifty-fourth to Ninety-fourth, inclusive, and One Hundred First to One Hundred Fourth, inclusive, hereof set forth with the same force and effect as if herein again averred in full, and says that if the complainant shall be found entitled to bring this action in its own name, the defendant should recover of the complainant the sum of Eight million eight hundred thirty-nine thousand eight hundred twenty dollars and eighty cents ($8,839,820.80), together with interest on Two thousand five hundred seventy

dollars ($2,570) from June 1, 1920, on Ninety thousand nineteen dollars and fifty-five cents ($90,019.55) from February 1, 1921, and on Eight million seven hundred forty-seven thousand two hundred thirty-one dollars and twenty-five cents ($8,747,231.25) from September 1, 1922, and the costs and disbursements of this action.

Wherefore, the defendant prays:

1. That the bill of complaint be, in all respects, dismissed, with costs of this action.

2. That if the above prayer be not granted, then that the defendant recover of the complainant the sum of Eight million eight hundred thirty-nine thousand eight hundred twenty dollars and eighty cents ($8,839,820.80), together with interest on Two thousand five hundred seventy dollars ($2,570) from June 1, 1920, on Ninety thousand nineteen dollars and fifty-five cents ($90,019.55) from February 1, 1921, and on Eight million seven hundred forty-seven thousand two hundred thirty-one dollars and twenty-five cents ($8,747,231.25), from September 1, 1922, and the costs and disbursements of this action.

3. That the defendant have such other and further relief as may be just and equitable.

Charles Sinkler,
Solicitor for the Defendant,
Bethlehem Shipbuilding Corporation, Ltd.

Cravath, Henderson & de Gersdorff,
of Counsel.

July 22, 1925.

Defendant's Answer
(Bethlehem Shipbuilding Corp., Ltd.)
Exhibit 1

EXHIBIT 1

THE CONTRACT SHIP PROGRAM

Line No.	A — Contract between the Fleet Corporation and the Bethlehem Shipbuilding Corporation, Ltd., for the construction of	B	C — Date of such contract	D — Date of Delivery—On or before	E — Estimated cost of the vessels specified in the contracts	F — Increase in wages, to be added to estimated cost	G — Net cost of changes and extras to be added or subtracted from estimated cost	H — Estimated cost of the vessels specified in the contracts, as increased (decreased) by the amounts shown in columns D to G inclusive	I — Actual cost of the vessels as stated by the Fleet Corporation on its final audit	J — Items of cost disallowed by the Fleet Corporation but which were included in the actual cost of the vessels, as shown in the contracts	K — Actual cost of the vessels, as determined in accordance with such contracts, as shown in column H plus or minus column J	Line No.	L — Savings (col. K)	M — Fixed fees specified in or calculated in accordance with such contracts	N — Amounts which become payable from time to time to the defendant on account of savings (not to exceed 10% of L)	O — Amounts paid by the Fleet Corporation to the defendant on account of		Actual Cost	Fixed Fees	Savings
	No. 177, Exhibit 5 hereto		Dec. 31, 1917	July 31, 1920	$25,440,000.00	$2,508,532.11	$ 60,495.28	$28,008,997.39	$22,480,047.20	$72,000.00	$22,561,047.20	1	$5,596,521.32	$2,520,000.00	$2,753,260.66	$22,731,035.96	$2,268,000.00	$1,980,242.43	$229,887.76
2	178	" 6	"	Dec. 31, 1920	8,866,000.00	1,331,183.17	180,959.00	10,405,142.17	9,303,599.15	238,682.32	10,058,262.27	2	382,312.74	855,000.00	191,150.37	9,793,480.18	769,500.00 ¶	783,000.00	62,669.82
3	179	" 7	"	June 14, 1919	6,230,000.00	514,436.38	24,328.00	7,062,764.38	5,589,605.41	30,000.00	5,589,605.41	3	1,499,944.31	600,000.00	749,972.15	5,657,186.58	539,958.90	515,222.37	60,091.10
4	182	" 8	"	April 30, 1919						12,000.00	11,266,351.41	4		1,121,575.71		11,495,431.22	800,580.00		107,693.79
5	183	" 9	"	April 30, 1919	5,595,000.00	776,639.20	27,791.00*	6,358,848.20	5,155,881.13	44,291.72	5,360,174.85	5	1,018,638.79	551,000.00	509,319.40	5,368,867.81	499,500.00	402,056.25	8,693.96
6	184	" 10	"	Nov. 21, 1919	5,865,000.00	994,934.80	525,576.24	7,385,511.04	6,345,185.69	30,000.00	6,179,435.69	6	1,254,661.60	670,000.00	637,300.80	6,543,048.69	656,700.92	376,053.79	30,621.67
7	191	" 11	"	May 8, 1919	8,514,000.00	621,947.17	103,760.52	9,239,707.69	6,370,086.31	20,000.00	6,390,086.31	7	2,853,825.25	851,400.00	1,426,914.13	6,403,741.11	760,260.00	1,100,000.00	13,654.89
8	196	" 12	"	Sept. 27, 1918	1,295,000.00	152,318.73	5,960.11	1,453,238.84	1,124,446.54	6,500.00	1,130,946.54	8	302,312.30	129,500.00	151,156.15	1,142,852.40	115,400.50	112,656.84	15,497.41
9	220	" 4	"	Mar. 18, 1918	11,865,000.00	1,969,148.85	124,402.00	13,958,550.85	10,911,003.79	65,865.94	10,976,869.64	9	3,014,799.98	1,175,000.00	1,507,399.99	11,149,326.76	1,057,500.00	837,579.61	17,497.22
10	221	" 5	(cancelled)	April 22, 1918	4,503,000.00	335,271.90	17,604.30	4,855,876.20	3,226,882.06	10,800.00	3,237,682.06	10	1,618,194.14	415,000.00	647,441.16	3,942,727.40	373,500.00	455,000.00	11,045.39
11	299	" 2	April 30, 1918	Dec. 22, 1919	5,550,000.00	635,349.36	35,581.20	6,174,788.36	4,874,618.67	44,291.76	4,918,912.43	11	1,274,372.15	555,000.00	637,186.08	4,896,985.21	499,500.00	479,402.75	21,927.22
12	300	" 3	July 30, 1920	July 30, 1920	6,000,000.00	899,911.67	41,939.00	6,940,850.67	5,127,782.31	30,000.00	5,157,782.31	12	1,783,033.44	600,000.00	892,966.82	5,160,180.02	540,000.00	607,650.13	6,737.42
13	301	" 17	"	July 22, 1921	14,625,000.00 (6)	1,531,967.62	46,532.03	20,403,499.65	16,314,777.23 (1)	47,117.00	16,314,777.23 (1)	13	5,064,974.75	1,952,474.45 (2)	2,532,487.38	16,172,964.79 (3)	1,220,854.85 (4)	1,744,757.57	20,181.00
14	312	" 18	"	"	"	"	"	"	313,594.84	"	313,594.84	14		61,319.49	"	313,594.84	54,000.00	"	2,359.49
15	313	" 19	(canceled)	"	"	"	"	"	488,192.25	"	488,192.25	15		88,819.22	"	431,567.18	21,450.00	"	64,044.29
16	314	" 20	(canceled)	"	"	"	"	"	13,057,316.42	79,989.10	13,137,305.52	16	1,295,127.78	1,154,000.00	647,563.89	13,150,053.43	1,038,577.35	136,389.98	12,748.37
17	340	" 21	(canceled)	June 21, 1921								17							
18	465	" 22	"	July 15, 1921	12,480,000.00 (6)	1,509,378.86	5,503,773.00	19,303,971.38 (7)	18,296,591.08		18,296,591.08 (8)	18	4,197,289.20	1,599,621.49 (9)	750,000.00	17,947,640.40(10)	1,064,000.00 (11)	348,950.68	533,621.49
19												19							
20	TOTAL				$155,603,390.63	$140,542,098.40	$739,541.84	$141,279,640.24	$136,073,912.55			19	$30,745,243.14	$14,833,750.56	$14,022,976.98	$141,738,922.24	$12,758,901.58	$9,814,633.05	$679,282.00

Line No.	G — Amounts paid and to be paid by the Fleet Corporation to the defendant on account of		H — Actual cost of the vessels as stated by the Fleet Corporation on its final audit	I — Items of cost disallowed by the Fleet Corporation but which were included in the actual cost of the vessels, as shown in the contracts	J — Actual cost of the vessels, as determined in accordance with such contracts, as shown in column H plus or minus column I	Line No.	K — Savings (col. J)	L — Fixed fees specified in or calculated in accordance with such contracts	M — Amounts which become payable from time to time to the defendant on account of savings (not to exceed 10% of L)	N — Amounts paid by the Fleet Corporation to the defendant on account of		O — Amounts paid and to be paid by the Fleet Corporation to the defendant on account of		P — Amounts due from and unpaid by the Fleet Corporation to the defendant		Q — Amounts which the Fleet Corporation claims it is entitled to withhold from the defendant on account of the matters referred to in the answer, and included in the figures of Amounts paid by the Fleet Corporation to the defendant (see col. 6 of the Answer)	Line No.
	Actual Cost	Fixed Fees										Actual cost	Fixed Fees	Savings		
	$22,731,035.96	$2,268,000.00	$1,980,242.43	$229,887.76	$252,000.00	$772,018.23	$755,829.47	1
	9,793,480.18	769,500.00 ¶	783,000.00	62,669.82	85,500.00	77,346.35	62,846.44	2
	5,657,186.58	539,958.90	-515,222.37	60,091.10	85,500.00	234,748.78	227,168.71	3
	11,495,431.22	800,580.00		107,693.79	171,000.00		194,495.92	4
	5,368,867.81	499,500.00	402,056.25	8,693.96	53,500.00	107,263.15	154,070.19	5
	6,543,048.69	656,700.92	376,053.79	30,621.67	85,500.00	157,267.10	167,276.51	6
	6,403,741.11	760,260.00	1,100,000.00	13,654.89	85,140.00	326,934.13	290,722.89	7
	1,142,852.40	115,400.50	112,656.84	15,497.41	17,100.00	14,099.44	20,497.41	8
	11,149,326.76	1,057,500.00	837,579.61	17,497.22	117,500.00	667,840.31	614,861.38	9
	3,942,727.40	373,500.00	455,000.00	11,045.39	41,500.00	222,897.77	222,897.77	10
	4,896,985.21	499,500.00	479,402.75	21,927.22	53,500.00	157,781.31	157,781.31	11
	5,160,180.02	540,000.00	607,650.13	6,737.42	59,500.00	225,156.29	220,758.66	12
	16,172,964.79 (3)	1,220,854.85 (4)	1,744,757.57	20,181.00	121,419.80	787,729.81	961,162.07	13
	313,594.84	54,000.00		2,359.49			73,904.42	14
	431,567.18	21,450.00		64,044.29	27,419.22		64,044.29	15
	13,150,053.43	1,038,577.35		136,389.98	12,748.37	111,423.55	613,948.22	16
						111,173.58	276,173.58	17
	17,947,640.40(10)	1,064,000.00 (11)		348,950.68	533,621.49	750,000.00	1,634,572.17	18
								19
	$141,738,922.24	$12,758,901.58	$9,814,633.05	$679,282.00	$2,351,022.56	$5,009,343.93	$6,881,084.49	19

** Figures in italics are deductions or overpayments, as the case may be*

1—Includes $699,740.46 cost of canceled Hulls 1685-1687
2—Includes $69,974.65 profit on canceled Hulls 1685-1687
3—Includes $914,685.34 paid on canceled Hulls 1685-1687
4—Includes $26,604.80 paid on canceled Hulls 1685-1687
5—Amount payable under Article XXIV of contract 340 on account of cancellation (after deducting $10,000 on account of office building).
6—Excludes estimated cost of canceled vessels.
7—After deducting $187,980.60 on account of decreases in price of materials and increases in freight rates.
8—Includes $1,835,310.74 cost of canceled Hulls 2508-2510
9—Includes $721,562.13 profit on canceled Hulls 2508-2510
10—Includes $2,707,441.30 loss on canceled Hulls 2508-2510
11—Includes $200,000 paid on canceled Hulls 2508-2510

EXHIBIT 10.

CONTRACT

Between

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION

and

BETHLEHEM SHIPBUILDING CORPORATION, Ltd.

For Construction of Vessels

at

Elizabethport, New Jersey

Owner's Contract No. 184—S. C.
Owner's Hull Nos. 1169-1174.
Contractor's Hull Nos. 2118-2123.

Dated December 31, 1917.

CONTRACT made this 31st day of December, 1917, between Bethlehem Shipbuilding Corporation, Ltd., a corporation organized under the laws of the State of Delaware (herein called the Contractor), party of the first part, and the United States Shipping Board Emergency Fleet Corporation, a corporation organized under the laws of the District of Columbia (herein called the Owner), representing the United States of America, party of the second part.

Whereas, the Contractor is the owner of certain

real estate situated at Elizabethport, in the State of New Jersey, and the shipyard located thereon; and

Whereas, the Owner proposes to have constructed at said shipyard of the Contractor, under the rules and regulations of the American Bureau of Shipping (hereinafter called the Shipping Bureau) six (6) tug boats, complete with propelling machinery, auxiliaries and complete equipment, in accordance with drawings and specifications furnished by the Owner and hereto attached and made a part of this contract:

Now, therefore, this Contract Witnesseth, that for and in consideration of the mutual agreements herein the parties hereto hereby covenant and agree to and with each other as follows:

I.

CONSTRUCTION OF VESSELS.

The Contractor shall forthwith proceed with the construction of six (6) tugboats in accordance with the plans and specifications aforesaid. The construction of said vessels (the word "vessels" as used throughout this contract being intended to include everything covered by the plans and specifications above referred to) shall conform in all respects to the aforesaid plans and specifications, including duly authorized changes therein. Said vessels shall be provided with equipment, machinery, devices and appliances and appurtenances of every kind, complete in all respects and ready for service as provided for in the specifications, and shall be delivered to the Owner afloat at said shipyard of the Contractor at said Elizabethport.

II.

ALTERATIONS.

The Owner shall have the right, but only by orders in writing, to make such reasonable alterations, omissions, additions, or substitutions in the plans and specifications not materially affecting the general design of the vessels as the Owner may deem necessary. The Contractor agrees to accede to and carry the same into effect. The cost of making all such alterations, additions, and substitutions shall be paid for by the Owner on the same basis as any other work performed under this contract.

III.

TIME OF DELIVERY OF VESSELS.

1. It is agreed by both parties that time is of the essence of this contract. Unless prevented by causes of delay set forth in Paragraph 2 of this Article III the work under this contract shall be prosecuted at all times with the utmost vigor and dispatch and without interruption. The Contractor shall use every endeavor to deliver the first of said vessels in the month of September, 1918, and two vessels in each of the months of October and November and one vessel in the month of December, 1918.

DELAY.

2. If the Contractor be delayed or obstructed in the transaction or completion of the work provided for by this contract by the delay, neglect or default of the Owner or by reason of alterations or additions by the Owner, or the commandeering by the United States Government of materials on the ground or materials purchased by the Contractor

but not delivered, or by reason of other causes beyond the reasonable control of the Contractor among which (but not exclusive of others) are strikes, fires, lightning, earthquake, floods, riots, insurrections or war, or by reason of suspension of deliveries of material or machinery for any of the causes above stated, or by delay or failure of manufacturers to deliver material or machinery to be furnished the Contractor for use hereunder or by reason of instructions given by the Owner under Articles X and XXIV hereof, beyond the time herein stated, the time of delivery shall be extended for a period equivalent to the time lost by reason thereof; *provided, however,* that no request for extension of the contract time shall be considered unless the Contractor within thirty (30) days from the occurrence of an alleged cause of delay, shall notify the General Manager of the Owner, in writing, of the facts and circumstances in each case and of the extent to which the Contractor claims that the completion of the vessel is thereby delayed; and provided further that the Owner may, without prejudice to the rights of the Contractor, reserve his decision upon any and all claims for extension until the completion of the vessel, the work in the meantime not to be discontinued or delayed on account thereof. In the event that the parties hereto shall not agree as to such extension, such extension shall be determined in accordance with Article XX hereof.

IV.

The materials and parts which shall be used in the construction of the vessels shall be of the qual-

ity and characteristics best adapted to the various purposes for which they may be used in so far as they conform to the specifications and requirements of the Shipping Bureau. The Contractor shall supply such assistance as may be required by the surveyors of the Shipping Bureau and/or the representatives of the Owner, in making any tests and inspections of such material and parts at said shipyard of the Contractor as may be considered necessary by such surveyors or representatives.

V.

The workmanship on said vessels in detail and finish in all parts shall be first-class, and of the very best quality usual in American seagoing vessels of this class, and shall at all times be subject to the inspection of the inspectors of the Shipping Bureau and of those of the Owner as aforesaid, and the surveyors and inspectors may with the approval of the Owner or his duly authorized representative, direct the replacement of any unfit workmanship or materials.

VI.

INSPECTION, DISTRICT OFFICER.

The vessels shall be inspected during the progress of the work by the surveyors of the Shipping Bureau and the inspection certificate of the highest rating of said organization for seagoing vessels of this type must be obtained and furnished when and as each vessel is ready for delivery. Tonnage certificates in duplicate shall also be obtained from the Commissioner of Navigation and furnished at the time of delivery of the vessels to the Owner. All

expenses of such inspection and certificates shall be considered as part of the actual cost of the vessel. In addition to the surveyors of the Shipping Bureau, the Owner will employ at its own expense, one or more inspectors of recognized ability in their profession to supervise and assist in the construction of these vessels; they, and their assistants, described herein as the Owner's inspectors, will represent the Owner and will be required to watch closely the construction. Such one of them as shall, from time to time, be so designated by the Owner will act as representative of the Owner, and be designated as the District Officer, and to him shall be referred all questions arising under this contract at said shipyard. His decision on all important questions shall be in writing, and when rendered under his general authority or after approval by the Owner shall be binding, subject in all cases to appeal as provided in Article XX hereof.

VII.

TRIALS; DELIVERY.

Before final acceptance by the Owner of each vessel, the Owner may require a dock trial of not exceeding eight (8) hours, and/or sea trial at maximum draft and specified speed, or at a lesser draft and corresponding operating speed as determined by the Owner, at some point convenient to said shipyard of the Contractor of not exceeding four hours, which shall be to the satisfaction of the Owner. Should any vessel fail to meet such actual tests, then the Contractor agrees to take such additional steps as the Owner may require in order to put

such vessel in a condition where it will meet such tests. After the satisfactory completion of the trials and of all other work included in the plans, specifications and authorized changes, each vessel shall be delivered afloat to the representative of the Owner at said shipyard, and shall thereupon be accepted, and the Owner shall take possession of the vessel and be responsible for the safety thereof. The Owner shall remove such accepted vessel from said shipyard within such time as will prevent encumbrance of the waterfront or interference with the work of the Contractor on other vessels.

VIII.

TERMINATION OF CONTRACT.

In case of failure or omission of the Contractor, at any stage of the work prior to completion, from any cause or causes within its control, which shall exclude causes of delay mentioned in Paragraph 2 of Article III hereof, to go forward with the work and/or make progress towards its completion satisfactory to the Owner, the Owner may, except as qualified in this Article, terminate this contract. In that event the Owner may immediately enter that part of said shipyard used for the construction of these vessels, and such additional part thereof as may be necessary, and take possession of it, and of the vessels, materials and equipment and shall assume all commitments properly chargeable to the work hereunder. The Owner shall thereupon cause to be taken and filed with the United States Shipping Board a full and complete statement and inventory of all work done or begun on or about the

vessels and of all materials on hand and/or ordered or contracted for and applicable thereto, and a copy of such statement and inventory shall be furnished to the Contractor. Concurrently with the making of such statement and inventory, the Owner may proceed with the construction of the vessels either at said shipyard with its equipment, and facilities, or elsewhere, by contract or otherwise, and in its discretion use for this purpose all suitable materials on hand and included in such statement and inventory. In case the Owner shall thus terminate the contract the total amount to be paid hereunder, including all payment theretofore made, shall be the actual cost (computed in the manner defined in Article XVII hereof) of all work done under this contract up to the time of termination, plus such part of the fixed profit of the Contractor hereinafter provided for as the Owner may decide to have been justly earned; *provided, however*, that if within thirty (30) days after written notice to the Contractor by the Owner of the latter's intent to terminate this Contract, the Contractor can show to the satisfaction of the General Manager of the Owner reasonable industry and good faith in the prosecution of the work hereunder, and that the delays have been caused by circumstances over which it had no control as aforesaid, the Contractor shall be allowed such opportunity as the General Manager of the Owner may deem reasonable to complete the work.

INSOLVENCY OF CONTRACTOR.

Should the Contractor become insolvent, make an assignment or commit any act of bankruptcy, the

Owner may cancel this contract, and may, and is hereby empowered forthwith to enter, take possession of, and complete the work, without giving notice thereof to the Contractor.

INSURANCE.

The Contractor agrees to procure, so far as procurable at reasonable cost, and thereafter maintain such insurance, in such forms, on such property, to cover such contingencies, in such amounts, and for such periods as the Owner shall approve or require, and to make recommendations to the Owner regarding the various risks against which insurance should be carried. The policies shall provide that the loss, if any, shall be payable to the Owner for the use of the Owner and/or the Contractor, as their respective interests may appear. The Owner may dispense with insurance, in whole or in part. Should any vessel be constructively or actually totally destroyed and/or a total loss, no additional vessel shall be built under this contract in order to replace it and to complete the six (6) vessels herein provided for, unless required by the Owner. The Owner shall pay, within sixty (60) days after such total loss or destruction, to the Contractor for its profit for work done on any such vessel, up to the time of such total loss, or destruction, such sum as the General Manager of the Owner may determine to be fair and just, subject to arbitration as provided for in Article XX. In the event of such actual or constructive loss the Owner shall pay for all materials on hand intended for such vessels and such materials as the Contractor may have ordered

for such vessels, as well as all other items of cost incurred up to the time of such loss.

IX.

CASUALTY INSURANCE.

The Contractor agrees to insure to the satisfaction of the Owner, so far as insurance shall be procurable at reasonable cost, against the liability of the Contractor and/or the Owner for injuries to or death of employees, workmen, or the public or others in, on, or about the work covered by this contract.

PATENTS.

The Contractor shall to the best of its ability protect the Owner against claims for any infringement of patents or patent rights and for the use of any patented articles embodied or to be embodied in the vessels, by suitable agreement satisfactory to the Owner as to the use of such patents or patent rights. The Owner will assume all costs, expenses, and damages which it or the Contractor may be obliged to pay to procure such agreements, or to pay by reason of any infringement of patents or patent rights of the use of patented articles not covered by such agreements, pursuant to a decree by a proper court in any litigation involving the use of such patents, but the Contractor shall assist the Owner at the latter's expense, save for services of the Contractor's employees, in furnishing such evidence as to the use of the patents and other matters of fact as may be required by the Owner in such litigation. The Contractor shall promptly

notify the Owner in writing of any claims of infringement that may from time to time be brought to the Contractor's attention.

X.

LABOR.

The Contractor will comply with all instructions not contrary to law as to wages or conditions of employment of labor on this contract given to it in writing by the Owner. The Owner, in its discretion, will give such assistance as shall be within its power in securing and retaining the labor necessary for the work under this contract. The Contractor will promptly notify the Owner of any labor difficulties.

XI.

PROTECTION OF PROPERTY.

The Contractor shall provide the usual protection for the property of the Owner and of the Contractor at said shipyard, and shall furnish such additional protection as the Owner may require. Such additional protection, however, shall be paid for by the Owner.

XII.

OWNER TO USE POWER FOR EXPEDITION.

The Owner will, in its discretion, use its influence and such powers as it may have by law to assist the Contractor to secure with the utmost practicable expedition and at the minimum cost consistent with the existing conditions, the facilities, utilities, parts, materials and supplies required for the work under

this contract and will, in its discretion, also use its influence and powers to secure for the Contractor rail and/or preferential transportation from any and all railroad companies and public service companies for workmen, employees, materials, parts and supplies required for the work under this contract.

XIII.

TITLE.

It is agreed that title to all vessels either completed or under construction in so far as they shall have been inspected and approved by the Owner shall be in the United States of America and that the title to all material for the furtherance of work under this contract, however, and by whomsoever contracted for or assembled or set up in said shipyard or used in the construction of work under this contract, shall be in the Owner at all times. Nothing contained herein, however, shall be construed as a waiver by the Owner of its right to direct the replacement of unsatisfactory workmanship and/or materials.

INSPECTOR'S CERTIFICATE.

No inspector's certificate given or payment made under the terms of this contract (except on final payment) shall be conclusive evidence of the performance of this contract, either in whole or in part, and no payment shall be construed to be a waiver of the right of the Owner to direct the replacement of unsatisfactory workmanship and/or materials.

XIV.

LIENS AND TAXES.

The Contractor will keep the vessels in the course of construction free and clear of all claims, liens or encumbrances of any kind or description (except liens or encumbrances accruing through the default of the Owner, and/or for which the Owner shall be responsible and except claims and liens of the Contractor), and shall, before delivery of each vessel, show to the satisfaction of the Owner that such vessel is free and clear from any claims, liens and encumbrances except as aforesaid. The Contractor agrees that it will, to the extent that funds are available under the terms of Article XV, promptly pay for all labor, material or other service rendered to it in connection with the work under this contract.

XV.

PAYMENT OF ACTUAL COST.

The total actual cost (as defined in Article XVII) of constructing the vessels herein contracted for, shall be paid by the Owner to the Contractor as follows:

ESTABLISHMENT OF CASH FUND.

In order to provide the cash funds necessary for carrying on the work under this contract, the Owner will from time to time deposit, in its own name, in advance for the purposes of this contract, in such bank or banks as it may determine upon, such sums as may be necessary to constitute and to keep constituted a fund from which to finance the work, to

provide for payments to be made for materials, and for wages and salaries of persons employed upon the work hereunder. Such sums shall be used only for said purposes and they shall be drawn upon only by drafts signed by the Contractor and countersigned by the Owner's duly authorized representative. Such drafts will be countersigned only upon receipt of and in accordance with vouchers signed by the Contractor and approved in form and substance by the duly authorized representatives of the Owner. Payments so made shall be credited as payments on account of the cost of the vessels. Title to such sums and to interest paid by the bank or banks on such deposits shall be and remain in the Owner until withdrawn as aforesaid; and upon the final completion of this contract or upon default hereunder upon the part of the Contractor the Owner may withdraw without the signature of the Contractor any balance on hand in any bank account established under this Article.

OTHER PAYMENTS.

For other items of actual cost, including those incurred in outside offices, chargeable to the work under this contract but not paid from the aforesaid fund, payment shall be made to the Contractor by the Owner monthly within fifteen (15) days after the submission of bills covering such actual costs, certified to by the District Officer. The Contractor's profit shall be payable at the times and in the manner hereinafter in Article XIX specified.

XVI.

ACCOUNTS.

The Contractor shall establish and keep suitable accounts and records, which shall show the actual cost of all the work under this contract. The preservation of said accounts and records for a reasonable time shall be provided for by the agreement of the parties at the termination of this contract.

The accounts and records of the Contractor appertaining to the work under this contract shall at all reasonable times be open to inspection by the Owner. All statements and accounts relating to expenditures and costs hereunder shall be made by the Contractor in such form and supported by such original papers as may be required by the Owner. The methods and principles of keeping costs shall be, at all times, adequate for the determination of actual costs and shall be subject to the Owner's approval. All information obtained from the accounts and records shall be treated as confidential.

AUDITORS.

The Owner may send Auditors to said shipyard and to the Contractor's offices, to supervise the accounting.

ACCOUNT OF VESSELS.

The actual cost of the six (6) vessels herein contracted for shall be computed in the manner defined in Article XVII hereof and shall be kept in such manner and segregated into such items as may be necessary for the purposes of this contract and as may be agreed upon, and particularly as may be

necessary to separate the cost of these vessels from any others being built at the shipyards of the Contractor. The accounts shall be so kept that the actual cost of each of said vessels may be determined separately.

XVII.

ACTUAL COST.

For the purposes of this contract, actual cost of the construction of the vessels shall include the following, and items similar thereto in principle:

(a) The net costs, after deducting all discounts obtained, of labor (including compensation of labor by way of bonuses), and materials, machinery, equipment, and supplies furnished by the Contractor and entering into or expended in the manufacture, building, or construction of the vessels, and other direct charges, such as insurance on the vessels, etc.

(b) A proper proportion of running expenses, including ordinary rentals, cost of ordinary repairs, and maintenance, light, heat, power, insurance, management, salaries (including compensation by way of bonuses) and other indirect charges, all as incurred on account of the vessels constructed under this Contract.

(c) A proper proportion of interest accrued within the taxable year on bonds or other debts or loans existing or contracted prior to the date of this contract and the proceeds of which shall be used or shall have been or shall be invested in plant, equip-

ment, etc. that shall be used in the performance of work under this contract.

(d) A proper proportion of taxes of all kinds accrued during the taxable year with respect to the business or property, except any Federal taxes.

(e) A proper proportion of physical losses actually sustained within the taxable year in connection with the construction of the vessels under this contract, including losses from fire, flood, storm, riot, vandalism, any acts of God, acts of war, or other casualties, and not compensated for by insurance or otherwise.

(f) A reasonable allowance, according to the condition, for depreciation of values of the property and plant of the Contractor used in connection with the work under this Contract. In the event of any dispute as to the amount to be allowed, it shall be determined by arbitration in the manner provided for in Article XX.

XVIII.

SALVAGE OF SCRAP.

All materials and supplies purchased for but not used in the construction of the vessels herein contracted for shall be and remain the property of the Owner and the value thereof shall be credited on the cost of the vessels. The salvage, value of scrap, waste, containers, etc., originally purchased for the vessels and disposed of during the life of this contract shall be credited to the cost of the vessels.

XIX.

PRICE.

The price to be paid for each vessel to be constructed and furnished in accordance with the terms of this contract, including authorized changes therein as herein provided, shall be the actual cost, plus the definite sum for profit hereinafter in this Article provided for, based upon an estimated actual cost to the Contractor, at the wage schedule as adopted by the Federal Adjustment Wage Board and in force on January 3, 1918 at the Navy Yard of the United States at Brooklyn in the City of New York, of Three hundred thousand dollars ($300,000). Should the rate of wages actually paid by the Contractor be increased or decreased by the direction of, or with the approval of, the Owner from those of the schedule aforesaid, said estimated cost shall be increased or decreased by the amount that such increase or decrease of wages increases or decreases the relative labor cost over those that would be incurred were the aforesaid schedule in force during the whole period of the construction of the vessel. The estimated cost shall also be increased or diminished by the net cost of any changes in plans or specifications made by the authority of the Owner. Should the actual cost of any vessel in the execution of the work reach or exceed the sum of Three hundred thousand dollars ($300,000) or such revised estimated cost in lieu thereof as shall be determined in accordance with the foregoing provision, the Contractor shall be paid the fixed sum for profit of Thirty thousand dollars ($30,000) for such vessel. Should the actual cost be

less than the estimated revised cost as aforesaid for increase of wages and cost of changes, the Contractor shall be allowed as profit on each vessel in addition to said fixed sum for profit of Thirty thousand dollars ($30,000) one-half the amount by which such actual cost of each vessel falls short of the estimated cost revised as aforesaid.

PROFIT WHEN PAYABLE.

Said fixed sum for profit of Thirty thousand dollars ($30,000) shall be paid as follows:

To the total of the approved monthly bills of actual costs of the vessels there shall be added and paid ten per cen (10%) thereof as part payment on account of said profit, such payments of said ten per cent. (10%) to be continued until ninety per cent. (90%) of the entire amount of said fixed sum for profits shall have been paid to the Contractor. Thereafter further payments on account of said fixed sum for profit shall not be required until the vessel in respect of which such sum shall be payable shall have been completed, delivered and accepted by the Owner. On the completion, a complete audit of the total of the cost of said vessel or vessels shall be made, together with a determination of the revised estimated cost as hereinbefore provided, and thereupon the balance of said fixed sum for profit and any additional profit over and above said Thirty thousand dollars ($30,000) determined as hereinbefore provided shall become immediately due and payable.

XX

DISPUTES.

In case the parties fail to agree as to any matter contained in or connected with this contract, or if any doubt or dispute arises as to the meaning, construction or effect of this contract, or of any of the provisions or covenants hereof, or of the plans and specifications or any part or parts thereof which are a part hereof, or as to the manner of doing the work provided for hereunder, or as to the materials used or to be used or the time to be allowed or the amounts to be paid or allowed for alterations, omissions, additions or substitutions, or as to any other particular, the matter shall be promptly referred to and determined by the General Manager of the Owner and his decision in writing shall be final and binding upon the parties except as next hereinafter provided.

In case after delivery of a completed vessel to the Owner under this Contract (but only in that event) the Contractor shall deem that it is aggrieved by any decision of said General Manager as to any disputed matter hereunder of any kind regarding such vessel, and shall give written notice to the Owner to that effect within thirty (30) days after delivery of such vessel to, or after final payment of such vessel by the Owner, such matter shall be determined by a Board which shall consist of three disinterested naval architects or engineers or experts to be appointed, one by the Owner, one by the Contractor, and the third by the two so appointed. Such Board shall within thirty (30) days after sub-

mission of such matter to it make its determination, and its finding (made by a majority of the Board) shall be conclusive on both parties. Provided, however, that if the Contractor fails to notify the Owner in writing of its intent subsequently to appeal any decision of said General Manager, adverse to it, within ten (10) days after written notice of such adverse decision, the decision of said General Manager shall become final and binding upon both parties without appeal to the Board herein provided for. The cost of any such arbitration shall be borne equally by the Owner and the Contractor.

XXI.

NOT ASSIGNABLE.

This contract shall not, nor shall any interest herein, be transferred by the Contractor to any other person or persons save with the consent of the Owner in writing.

XXII.

NOTICES AND PAYMENTS BY MAIL.

All notices in writing from the Contractor to the Owner shall be sent by mail or by prepaid telegram (confirmed by mail) addressed to the United States Shipping Board Emergency Fleet Corporation at Washington, D. C., or to be delivered personally to an executive officer or the District Officer of the Owner.

All notices in writing from the Owner to the Contractor shall be sent by mail or by prepaid telegram (confirmed by mail) addressed to Bethlehem Shipbuilding Corporation, Ltd., South Bethlehem, Penn-

sylvania, and a copy to it at Elizabeth, New Jersey, or be delivered personally to an executive officer of the Contractor.

Payments hereunder required to be made direct to the Contractor shall be made by the Owner by check addressed to the Contractor by mail at South Bethlehem, Penna.

XXIII.

PROTECTION OF OWNER'S INTERESTS.

The Contractor, in all its acts hereunder, shall use its best efforts to protect and subserve the interest of the Owner.

XXIV.

CONTROL BY OWNER.

The Contractor shall in the performance of its agreements hereunder comply with and be bound by all directions, instructions, and decisions of the Owner, or its authorized representatives, and compliance by the Contractor with any such directions, instructions or decision shall be a justification and protection to the Contractor for any action so taken.

XXV.

PARTICIPATION IN PROFITS.

No member of, or delegate to Congress, or Resident Commissioner is or shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom, but the Article shall not apply to this contract as far as it may be within the operation or exception of Section 116 of the Act of Congress, approved March 4, 1909 (35 Stats. 1109).

XXVI.

PERMITS.

The Contractor agrees to comply with all laws, rules, regulations and requirements of the Departments of the United States affecting the construction of works, plants, and vessels, in or on navigable waters and the shores thereof, and all other waters subject to the control of the United States, in so far as they apply to the work hereunder, and to procure at its own expense all permits from the United States, State and local authorities which may be necessary to begin and carry on the work hereunder, and at all times to comply with all United States, State and local laws in any way affecting the work carried on under this Contract.

XXVII.

RATE OF WAGES.

The Contractor agrees that it will at all times pay the prevailing rate of wages, and that under no circumstances will it pay any wages in excess of the prevailing rate without first obtaining the written approval of the Owner. The question of what is the prevailing rate and other questions with regard thereto are subject to the definition and interpretation of the Owner. If it should become necessary during the period of this contract to increase the wages of any of the employees of the Contractor it shall be done only with the written consent of the Owner first obtained, in which event the cost of such increase will be borne by the Owner, provided that any increase in wages or other increased cost on account of wages made without the written ap-

proval of the Owner shall be borne by the Contractor; and provided further that nothing herein shall be construed to prevent the Contractor from assigning work in divisions or pieces at prices or rates considered reasonable according to its present practice. If Sundays, holidays or overtime work be resorted to, it shall be without additional cost to the Owner unless specifically ordered by the Owner.

XXVIII.

This contract is executed and delivered upon the understanding that, if desired by the Owner a provision satisfactory in form and terms to the Owner, restricting the hours of labor of laborers and mechanics employed by the Contractor or by sub-contractors and/or providing for the payment of extra compensation for overtime work, will be inserted in the contract, with the same force and effect as if inserted in the contract before the execution and delivery thereof.

XXIX.

The Contractor hereby grants to the Owner an option for a period of sixty (60) days from January 5, 1918, within which the Owner may elect to require the Contractor to build fourteen (14) tugs in addition to the six tugs the construction of which is hereinbefore provided for, or such number less than fourteen (14) as the Owner shall elect. In case the Owner shall exercise said option it shall give notice thereof to the Contractor by telegraph, confirmed by mail as hereinbefore provided, in which notice it shall specify the number of such additional tugs in respect of which it elects to exercise said option. In case such notice shall be

given, all the terms and provisions of this contract, in so far as applicable, shall apply to the construction of the additional tugs covered by such notice, except that the fixed fee for profit to the Contractor on account of the construction of such additional tugs shall be Thirty-five thousand dollars ($35,000), instead of Thirty thousand dollars ($30,000), and that the delivery of said additional tugs shall be as follows: The first two thereof in the month of March, 1919, and thereafter two tugs per month until all of said additional tugs shall have been completed and delivered.

In witness whereof the parties have caused these presents to be executed by their proper corporate officers and their corporate seals to be hereto affixed and attached as of the day and year first above stated.

Bethlehem Shipbuilding Corporation, Ltd.,

By J. W. Powell,
Vice President.

(Corporate Seal)

Attest:
A. N. Roberts,
Asst. Secretary.

United States Shipping Board Emergency Fleet Corporation,

By Charles Piez,
Vice President.

(Corporate Seal)

Attest:
Lester Sisler,
Secretary.

Approved as to form
Date—2-4-18
W. H. W. Jr.
Legal Division

U. S. Shipping Board Building
1319 F Street NW.

UNITED STATES SHIPPING BOARD
EMERGENCY FLEET CORPORATION
WASHINGTON

February 28, 1918.

Bethlehem Shipbuilding Corporation, Ltd.,
South Bethlehem, Pa.

Gentlemen:

This is to confirm telegram sent you on this date both at South Bethlehem, Pa. and Elizabethport, New Jersey, which reads as follows:

"The Emergency Fleet Corporation hereby exercises option contained in article twentynine of contract number one hundred eightyfour dated December thirtyfirst nineteen hundred seventeen covering construction six tugboats at Elizabethport New Jersey stop In accordance with above you are authorized to construct fourteen additional tugs at cost plus a fee of thirtyfive thousand dollars per tug with deliveries as specified in the above mentioned contract and under conditions similar to those contained therein except that for purposes of determining the final fee to be paid the contractor the estimated cost is to be considered as two

hundred ninety thousand dollars per tug instead of three hundred thousand dollars as in contract one hundred eightyfour".

This order, when accepted, will constitute your authority for the construction of the said fourteen additional tugs. These tugs to be constructed in accordance with the terms of your contract No. 184 with the Corporation, dated December 31, 1917, except as follows:

1. The price you are to be paid for these tugs is the actual cost plus a fee of $35,000 per tug, with a provision that a further fee may be earned in accordance with the terms of your present contract, except that for purposes of payment, the actual estimated cost is to be considered $290,000 instead of $300,000 per tug.

2. These tugs to be delivered two in the month of March 1919 and two each month thereafter until all have been completed and delivered.

The above changes from the terms of your present contract have been discussed with your Mr. Brown and it is understood that they are satisfactory to your Corporation.

It is requested that receipt of this letter be promptly acknowledged. In this connection it is noted that a copy of same also goes to you by registered mail at Elizabethport, New Jersey.

Very truly yours,
Charles Piez,
Vice President & General Manager.
March 5th, 1918.

Defendant's Answer
(Bethlehem Shipbuilding Corp., Ltd.)
Exhibit 10

U. S. Shipping Board
Emergency Fleet Corporation,
Washington, D. C.

Gentlemen:

Permit us to acknowledge the receipt of your letter of the 28th ultimo, confirming telegram sent this Company on that date to South Bethlehem, Pa. and to Elizabethport, New Jersey, exercising the option contained in Article 29 of contract Number 184 dated December 31st, 1917, covering the construction of Fourteen (14) additional tugs.

This Company hereby accepts the order for these tugs to be constructed in accordance with the above mentioned contract as modified by your letter of the 28th ultimo.

Very truly yours,

Bethlehem Shipbuilding Corporation, Ltd.,

By .....
Vice President.

EXHIBIT 18

CONTRACT

Between

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION

and

BETHLEHEM SHIPBUILDING CORPORATION, LTD.

For Construction of Vessels

at

SPARROW'S POINT, MARYLAND

Owner's Contract No. 312 S. C.
Owner's Hull Nos. 1972-4.
Contractor's Hull Nos. 4192-4.

Dated May 15th, 1918

CONTRACT made this fifteenth day of May, 1918, between the Bethlehem Shipbuilding Corporation, Ltd., a corporation organized under the laws of the State of Delaware (herein called the Contractor), party of the first part, and the United States Shipping Board Emergency Fleet Corporation, a corporation organized under the laws of the District of Columbia (herein called the Owner) representing the United States of America, party of the second part.

Whereas, the Contractor is the owner of certain

real estate situated at Sparrow's Point in the State of Maryland and the shipyard located thereon; and

Whereas, the Owner proposes to have constructed at said shipyard of the Contractor, under the rules and regulations of the American Bureau of Shipping (hereinafter called the Shipping Bureau), three (3) cargo vessels of about seven thousand four hundred (7400) tons dead weight carrying capacity each, complete with propelling machinery, full military requirements, auxiliaries and complete equipment, in accordance with Contractor's drawings and specifications (all drawings and specifications before becoming binding on the owner must bear the acceptance and approval of the Owner, or its duly authorized representative) hereto attached and made part of this contract.

Now, therefore, this contract witnesseth, that for and in consideration of the mutual agreements herein the parties hereto hereby covenant and agree to and with each other as follows:

I.

CONSTRUCTION OF VESSELS.

The Contractor shall forthwith proceed with the construction of three (3) cargo vessels of about seven thousand four hundred (7,400) tons dead weight carrying capacity, in accordance with the plans and specifications aforesaid. The construction of said vessels (the word "vessels" as used throughout this contract being intended to include everything covered by the plans and specifications above referred to) shall conform in all respects to

the aforesaid plans and specifications, including duly authorized changes therein. Said vessels shall be provided with equipment, machinery, devices and appliances, military requirements, and appurtenances of every kind, complete in all respects and ready for service as provided for in the specifications, and shall be delivered to the Owner afloat at said shipyard of the Contractor.

II.

ALTERATIONS.

The Owner shall have the right, but only by orders in writing, to make such reasonable alterations, omissions, additions, or substitutions in the plans and specifications not materially affecting the general design of the vessels as the Owner may deem necessary. The Contractor agrees to accede to and carry the same into effect. The cost of making all such alterations, additions, and substitutions shall be paid for by the Owner on the same basis as any other work performed under this contract.

III.

TIME OF DELIVERY OF VESSELS.

1. It is agreed by both parties that time is the essence of this contract. Unless prevented by causes of delay set forth in Paragraph 2 of this Article III the work under this contract shall be prosecuted at all times with the utmost vigor and dispatch and without interruption. The Contractor shall use every endeavor to deliver said vessels as follows:

The first vessel about the first of December, 1919, the second vessel about the fifteenth of December,

1919, and the third vessel about the thirtieth of December, 1919.

DELAY.

2. If the Contractor be delayed or obstructed in the transaction or completion of the work provided for by this contract by the delay, neglect or default of the Owner, or by reason of alterations or additions by the Owner, or the commandeering by the United States Government of materials on the ground, or materials purchased by the Contractor but not delivered, or by reason of other causes beyond the reasonable control of the Contractor, among which (but not exclusive of others) are strikes, fires, lightning, earthquake, floods, riots, insurrections of war, or by reason of suspension of deliveries of material or machinery for any of the causes above stated, or by delay or failure of manufacturers to deliver material or machinery to be furnished the Contractor for use hereunder, or by reason of instruction given by the Owner under Articles X and XXIV hereof, beyond the time herein stated, the time of delivery shall be extended for a period equivalent to the time lost by reason thereof; provided, however, that no request for extension of the contract time shall be considered unless the Contractor, within thirty (30) days from the occurrence of an alleged cause of delay, shall notify the General Manager of the Owner, in writing, of the facts and circumstances in each case and of the extent to which the Contractor claims that the completion of the vessel is thereby delayed; and provided further that the Owner may, without prejudice to the rights of the Contractor, reserve its de-

cision upon any and all claims for extension until the completion of the vessel, the work in the meantime not to be discontinued or delayed on account thereof. In the event that the parties hereto shall not agree as to such extension, such extension shall be determined in accordance with Article XX hereof.

IV.

The materials and parts which shall be used in the construction of the vessel shall be of the quality and characteristics best adapted to the various purposes for which they may be used in so far as they conform to the specifications and requirements of the Shipping Bureau. The Contractor shall supply such assistance as may be required by the surveyors of the Shipping Bureau and/or the representatives of the Owner, in making any tests and inspections of such material and parts at said shipyard of the Contractor as may be considered necessary by such surveyors or representatives.

V.

WORKMANSHIP.

The workmanship of said vessels in detail and finish in all parts shall be first-class, and of the very best quality usual in American sea-going vessels of this class, and shall at all times be subject to the inspection of the inspectors of the Shipping Bureau and of those of the Owner as aforesaid, and the surveyors and inspectors may with the approval of the Owner or its duly authorized representative, direct the replacement of any unfit workmanship or materials.

VI.

INSPECTION—DISTRICT OFFICER.

The vessels shall be inspected during the progress of the work by the surveyors of the Shipping Bureau and the inspection certificate of the highest rating of said organization for seagoing vessel of this type must be obtained and furnished when and as each vessel is ready for delivery. Tonnage certificates in duplicate shall also be obtained from the Commissioner of Navigation and furnished at the time of delivery of the vessels to the Owner. All expenses of such inspection and certificate shall be considered as part of the actual cost of the vessel. In addition to the surveyors of the Shipping Bureau, the Owner will employ, at its own expense, one or more inspectors of recognized ability in their profession to supervise and assist in the construction of these vessels. They and their assistants, described herein as the Owner's inspectors, will represent the Owner and will be required to watch closely the construction. Such one of them, as shall from time to time be so designated by the Owner, will act as representative of the Owner, and be designated as the District Officer, and to him shall be referred all questions arising under this contract at said shipyard. His decision on all important questions shall be in writing, and when rendered under his general authority or after approval by the Owner shall be binding, subject in all cases to appeal as provided in Article XX hereof.

VII.

TRIALS.

Before final acceptance by the Owner of each vessel, the Owner may require a dock trial of not exceeding eight (8) hours, and/or a sea trial at maximum draft and specified speed, or at a lesser draft and corresponding operating speed, as determined by the Owner, at some point convenient to said shipyard of the Contractor of not exceeding four hours, which shall be to the satisfaction of the Owner. Should any vessel fail to meet such actual tests then the Contractor agrees to take such additional steps as the Owner may require in order to put such vessel in a condition where it will meet such tests. After the satisfactory completion of the trials, tank tests and all other work included in the plans, specifications and authorized changes, each vessel shall be delivered afloat to the represenative of the Owner at said shipyard, and shall thereupon be accepted, and the Owner shall take possession of the vessel and be responsible for the safety thereof. The Owner shall remove such accepted vessel from said shipyard within such time as will prevent encumbrance of the waterfront or interference with the work of the Contractor on other vessels.

VIII.

TERMINATION OF CONTRACT.

In case of failure or omission of the Contractor, at any stage of the work prior to completion, from any cause or causes within its control, which shall exclude causes of delay mentioned in Paragraph 2

of Article III hereof, to go forward with the work and/or make progress towards its completion satisfactory to the Owner, the Owner may, except as qualified in this Article, terminate this contract. In that event the Owner may immediately enter that part of said shipyard used for the construction of said vessels, and such additional part thereof as may be necessary, and take possession of it, and of the vessels, materials and equipment and shall assume all commitment properly chargeable to the work hereunder. The Owner shall thereupon cause to be taken and filed with the United States Shipping Board, a full and complete statement and inventory of all work done or begun on or about the vessels and of all materials on hand and/or ordered or contracted for and applicable thereto, and a copy of such statement and inventory shall be furnished to the Contractor. Concurrently with the making of such statement and inventory, the Owner may proceed with the construction of the vessels either at said shipyard with its equipment, and facilities, or elsewhere, by contract or otherwise, and in its discretion use for this purpose all suitable materials on hand and included in such statements and inventory. In case the Owner shall thus terminate this contract the total amount to be paid hereunder, including all payment theretofore made, shall be the actual cost (computed in the manner defined in Article XVII hereof) of all work done under this contract up to the time of termination, plus such part of the fixed profit of the Contractor hereinafter provided for as the Owner may decide to have been justly earned; provided, however, that if with-

in thirty (30) days after written notice to the Contractor by the Owner of the latter's intent to terminate this contract, the Contractor can show to the satisfaction of the General Manager of the Owner reasonable industry and good faith in the prosecution of the work hereunder, and that the delays have been caused by circumstances over which it had no control, as aforesaid, the Contractor shall be allowed such opportunity as the General Manager of the Owner may deem reasonable to complete the work.

INSOLVENCY OF CONTRACTOR.

Should the Contractor become insolvent, make an assignment or commit any act of bankruptcy, the Owner may cancel this contract, and may and is hereby empowered forthwith to enter, take possession of, and complete the work, without giving notice thereof to the Contractor.

INSURANCE.

The Contractor agrees to procure, so far as procurable at reasonable cost, and thereafter maintain, such insurance, in such forms, on such property, to cover such contingencies, in such amounts, and for such periods as the Owner shall approve or require, and to make recommendations to the Owner regarding the various risks against which insurance should be carried. The policies shall provide that the loss, if any, shall be payable to the Owner for the use of the Owner and/or the Contractor, as their respective interests may appear. The Owner may dispense with insurance, in whole or in part. Should

any vessel be constructively or actually totally destroyed and/or a total loss, no additional vessel shall be built under this contract in order to replace it and to complete the vessels herein provided for, unless required by the Owner. The Owner shall pay, within sixty (60) days after such total loss or destruction, to the Contractor for its profit for work done on such vessel, up to the time of such total loss or destruction, such sum as the General Manager of the Owner may determine to be fair and just, subject to arbitration as provided for in Article XX. In the event of such actual or constructive loss the Owner shall pay for all materials on hand intended for such vessels and such materials as the Contractor may have ordered for such vessels, as well as all other items of cost incurred up to the time of such loss.

IX.

CASUALTY INSURANCE.

The Contractor agrees to insure to the satisfaction of the Owner, so far as insurance shall be procurable at reasonable cost, against the liability of the Contractor and/or the Owner, for injuries to or death of employees, workmen or the public or others in, on, or about the work covered by this contract.

PATENTS.

The Contractor shall to the best of its ability protect the Owner against claims for any infringements of patents or patent rights and for the use of any patented articles embodied or to be embodied in the vessels by suitable agreements satisfactory to the Owner as to the use of such patents or patent

rights. The Owner will assume all costs, expenses, and damages which it or the Contractor may be obliged to pay to procure such agreements, or to pay by reason of any infringement of patents or patent rights or the use of patented articles not covered by such agreements, pursuant to a decree by a proper court in any litigation involving the use of such patents, but the Contractor shall assist the Owner at the latter's expense, save for services of the Contractor's employees, in furnishing such evidence as to the use of the patents and other matters of fact as may be required by the Owner in such litigation. The Contractor shall promptly notify the Owner in writing of any claims of infringements that may from time to time be brought to the Contractor's attention.

X.

LABOR.

The Contractor will comply with all instructions not contrary to law as to wages or conditions of employment of labor in this contract given to it in writing by the Owner. The Owner, in its discretion, will give such assistance as shall be within its power in securing and retaining the labor necessary for the work under this contract. The Contractor will promptly notify the Owner of any labor difficulties.

XI.

PROTECTION OF PROPERTY.

The Contractor shall provide the usual protection for the property of the Owner and of the Contrac-

tor at said shipyard and shall furnish such additional protection as the Owner may require. Such additional protection, however, shall be paid for by the Owner,

XII.

OWNER TO USE POWER FOR EXPEDITION.

The Owner will, in its discretion, use its influence, and such powers as it may have by law, to assist the Contractor to secure, with the utmost practicable expedition and at the minimum cost consistent with the existing conditions, the facilities, utilities, parts, materials and supplies required for the work under this contract and will, in its discretion, also use its influence and power to secure for the Contractor rail and/or preferential transportation from any and all railroad companies and public service companies for workmen, employees, materials, parts and supplies required for the work under this contract.

XIII.

TITLE.

It is agreed that title to all vessels either completed or under construction so far as they have been inspected and approved by the Owner shall be in the United States of America and that the title to all material for the furtherance of work under this contract, however and by whomsoever contracted for or assembled or set up in said shipyard or used in the construction of work under this contract, shall be in the Owner at all times. Nothing contained herein, however, shall be construed as a waiver by the Owner of its rights to direct the re-

placement of unsatisfactory workmanship and/or materials.

INSPECTOR'S CERTIFICATES.

No inspector's certificate given or payment made under the terms of this contract (except on final payment) shall be conclusive evidence of the performance of this contract, either in whole or in part, and no payment shall be construed to be a waiver of the right of the Owner to direct the replacement of unsatisfactory workmanship and/or materials.

XIV.

LIENS AND TAXES.

The Contractor will keep the vessels in the course of construction free and clear from all claims, liens or encumbrances of any kind or description (except liens or encumbrances accruing through the default of the Owner, and/or for which the Owner shall be responsible and except claims and liens of the Contractor), and shall, before delivery of each vessel, show to the satisfaction of the Owner that such vessel is free and clear from all claims, liens, and encumbrances except as aforesaid. The Contractor agrees that it will, to the extent that funds are available under the terms of Article XV, promptly pay for all labor, material or other service rendered to it in connection with the work under this contract.

XV.

PAYMENT OF ACTUAL COST.

The total actual cost (as defined in Article XVII) of construction of the vessels herein contracted for

shall be paid by the Owner to the Contractor as follows:

ESTABLISHMENT OF CASH FUND.

In order to provide the cash funds necessary for carrying on the work under this contract, the Owner will from time to time deposit in its own name, in advance for the purposes of this contract, in such bank or banks as it may determine upon, such sums as may be necessary to constitute and to keep constituted a fund from which to finance the work of constructing said vessels, to provide for payments to be made for materials, and for wages and salaries of persons employed upon said work. Such sums shall be used only for said purposes and they shall be drawn upon only by drafts signed by the Contractor and countersigned by the Owner's duly authorized representatives. Such drafts will be countersigned only upon receipt of and in accordance with vouchers signed by the contractor and approved in form and substance by the duly authorized representatives of the Owner. Payments so made shall be credited as payments on account of the cost of the vessels. Title to such sums and to interest paid by the bank or banks on such deposits shall be and remain in the Owner until withdrawn as aforesaid; and upon the final completion of this Contract or upon default hereunder upon the part of the Contractor the owner may withdraw without the signature of the Contractor any balance on hand in any bank account established under this Article.

OTHER PAYMENTS.

For other items of actual cost, including those incurred in outside offices, chargeable to the work under this contract but not paid from the aforesaid funds, payment shall be made to the Contractor by the Owner monthly within fifteen (15) days after the submission of bills covering such actual costs, certified to by the District Officer. The Contractor's profits shall be payable at the times and in the manner hereinafter in Article XIX specified.

XVI.

ACCOUNTS.

The Contractor shall establish and keep suitable accounts and records, which shall show the actual cost of all the work under this contract. The preservation of said accounts and records for a reasonable time shall be provided for by the agreement of the parties at the termination of this contract.

The accounts and records of the Contractor appertaining to the work under this contract shall at all reasonable times be open to inspection by the Owner. All statements and accounts relating to expenditures and costs hereunder shall be made by the Contractor in such form and supported by such original papers as may be required by the Owner. The methods and principles of keeping costs shall be, at all times, adequate for the determination of actual costs, and shall be subject to the Owner's approval. All information obtained from the accounts and records shall be treated as confidential.

AUDITORS.

The Owner may send Auditors to said shipyard and to the Contractor's offices, to supervise the accounting.

ACCOUNT OF VESSELS.

The actual cost of the vessels herein contracted for shall be computed in the manner defined in Article XVII hereof and shall be kept in such a manner and segregated into such items as may be necessary for the purposes of this contract and as may be agreed upon, and particularly as may be necessary to separate the cost of these vessels from any others being built at the shipyards of the Contractor. The accounts shall be so kept that the actual cost of each of said vessels may be determined separately.

XVII.

ACTUAL COST.

For the purposes of this contract, actual cost of the construction of the vessels shall include the following, and items similar thereto in principle:

(a) The net costs, after deducting all discounts obtained, of labor (including compensation of labor by way of bonuses), and materials, machinery, equipment, and supplies furnished by the Contractor and entering into or expended in the manufacture, building, or construction of the vessels, and other direct charges, such as insurance on the vessels, etc.

(b) A proper proportion of running expenses, including ordinary rentals, cost of ordinary repairs and maintenance, light, heat, power, insurance, management, salaries (including compensation by way of bonuses), and other indirect charges, all as incurred on account of the vessels constructed under this contract.

(c) A proper proportion of interest accrued within the taxable year on bonds or other debts or loans existing or contracted for prior to the date of this contract and the proceeds of which shall be used, or shall have been or shall be invested in plant, equipment, etc., that shall be used, in the performance of the work under this contract.

(d) A proper proportion of taxes of all kinds accrued during the taxable year with respect to the business or property, except any Federal taxes.

(e) A proper proportion of physical losses actually sustained within the taxable year in connection with the construction of the vessels under this contract, including losses from fire, flood, storm, riot, vandalism, any acts of God, acts of war, or other casualties, and not compensated for by insurance or otherwise.

(f) A reasonable allowance, according to the condition, for depreciation of values of the property and plant of the Contractor used in connection with the work under this contract. In the event of any dispute as to the amount to be allowed, it shall be determined by arbitration in the manner provided for in Article XX.

XVIII.

SALVAGE OF SCRAP.

All materials and supplies purchased for but not used in the construction of the vessels herein contracted for shall be and remain the property of the Owner and the value thereof shall be credited on the cost of the vessels. The salvage, value of scrap, waste containers, etc., originally purchased for the vessels and disposed of during the life of this contract shall be credited to the cost of the vessels.

XIX.

PRICE.

The price to be paid for each vessel to be constructed and furnished in accordance with the terms of this contract, including authorized changes therein as herein provided, shall be the actual cost, plus the definite sum for profit hereinafter in this Article provided for, based upon an estimated actual cost to the Contractor, at the wage schedule as adopted by the Federal Adjustment Wage Board, and in force on January 3, 1918, at the Navy Yard of the United States, Norfolk, Virginia, of One Million Two Hundred and Fifty Thousand Dollars ($1,250,000) for each of said cargo vessels. Should the rate of wages actually paid by the Contractor be increased or decreased, by the direction of or with the approval of the Owner, from those of the schedule aforesaid, said estimated cost shall be increased or decreased by the amount that such increase or decrease of wages increases or decreases the relative labor cost from those that would be incurred were the aforesaid schedule in force during the whole period

of the construction of the vessels. The estimated cost shall also be increased or diminished by the net cost of any changes in plans or specifications made by the authority of the Owner. Should the actual cost of any vessels in the execution of the work reach or exceed the sum of One Million Two Hundred and Fifty Thousand Dollars ($1,250,000) or such revised estimate cost in lieu thereof in any case shall be determined in accordance with the foregoing provision, the Contractor shall be paid the fixed sum for profit of One Hundred and Twenty-five Thousand Dollars ($125,000) for such vessel. Should the actual cost be less than the estimated revised cost as aforesaid for increase of wages and cost of changes, the Contractor shall be allowed, as profit on each vessel in addition to said fixed sum for profit of One Hundred and Twenty-five Thousand Dollars ($125,000), one-half the amount by which such actual cost of each vessel falls short of the estimated cost revised as aforesaid.

Said fixed sums for profit of One Hundred and Twenty-five Thousand Dollars ($125,000) shall be paid as follows:

PROFITS WHEN PAYABLE.

To the total amount of the approved monthly bills of actual cost of the vessels there shall be added and paid ten per cent. (10%) thereof as part payment on account of said profit, such payments of said ten per cent. (10%) to be continued until ninety per cent. (90%) of the entire amount of said fixed sums for profit shall have been paid to the Contractor. Thereafter, further payments on account of said fixed sums for profit shall not be re-

quired until the vessel in respect of which such sums shall be payable shall have been completed, delivered and accepted by the Owner. On the completion, a complete audit of the total of the cost of said vessel or vessels shall be made together with a determination of the revised estimated cost as hereinbefore provided, and thereupon the balance of said fixed sums for profit and any additional profit over and above said sum of One Hundred and Twenty-five Thousand Dollars ($125,000), determined as hereinbefore provided, shall become immediately due and payable.

XX.

DISPUTES.

In case the parties fail to agree as to any matter contained in, or connected with this contract, or if any doubt or dispute arises as to the meaning, constructions or effect of this contract, or of any of the provisions or covenants hereof, or of the plans and specifications of any part or parts hereof, which are part hereof, or as to the manner of doing the work provided for hereunder, or as to the materials used or to be used or the time to be allowed or the amounts to be paid or allowed for alterations, omissions, additions or substitutions, or as to any other particular, the matter shall be promptly referred to and determined by the General Manager of the Owner and his decision in writing shall be final and binding upon the parties, except as next hereinafter provided. In case after delivery of a completed vessel to the Owner under this contract (but only in that event) the Contractor shall deem that it is aggrieved by any decision of said General

Manager as to any disputed matter hereunder of any kind regarding such vessel, and shall give written notice to the Owner to that effect within thirty (30) days after delivery of such vessel to, or after final payment of such vessel by, the Owner, such matter shall be determined by a Board which shall consist of three disinterested naval architects or engineers or experts to be appointed, one by the Owner, one by the Contractor, and a third by the two so appointed. Such Board shall within thirty (30) days after submission of such matter to it, make its determination, and its finding (made by the majority of the Board) shall be conclusive on both parties. Provided, however, that if the Contractor fails to notify the Owner in writing of its intent subsequently to appeal any decision of said General Manager adverse to it within ten (10) days after written notice of such adverse decision, the decision of said General Manager shall become final and binding upon both parties without appeal to the Board herein provided for. The cost of any such arbitration shall be borne equally by the Owner and the Contractor.

XXI.

CONTRACT NOT ASSIGNABLE.

This contract shall not, nor shall any interest therein, be transferred by the Contractor to any other person or persons save with the consent of the Owner in writing.

XXII.

NOTICES AND PAYMENTS.

All notices in writing from the Contractor to the Owner shall be sent by mail or by prepaid telegram

(confirmed by mail) addressed to the United States Shipping Board Emergency Fleet Corporation at Washington, D. C., or be delivered personally to an executive or the District Officer of the Owner.

All notices in writing from the Owner to the Contractor shall be sent by mail or by prepaid telegram (confirmed by mail) addressed to the Bethlehem Shipbuilding Corporation, Ltd., Bethlehem, Penna., and a copy to it at Sparrow's Point, Maryland, or be delivered personally to an executive officer of the Contractor.

Payments hereunder required to be made direct to the Contractor shall be made by the Owner by check addressed to the Contractor by mail at Bethlehem, Penna.

XXIII.

PROTECTION OF OWNER'S INTERESTS.

The Contractor, in all its acts hereunder, shall use its best efforts to protect and subserve the interest of the Owner.

XXIV.

CONTROL BY OWNER.

The Contractor shall in the performance of its agreements hereunder, comply with and be bound by all directions, instructions, and decisions of the Owner, or its authorized representatives, and compliance by the Contractor with any such directions, instructions or decision, shall be a justification and protection to the Contractor for any action so taken.

XXV.

PARTICIPATION IN PROFITS.

No member of, or delegate to Congress, or Resident Commissioner is or shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom, but the Article shall not apply to this contract as far as it may be within the operation or exception of Section 116 of the Act of Congress, approved March 4, 1909 (35 Stats. 1109).

XXVI.

PERMITS.

The Contractor agrees to comply with all laws, rules, regulations and requirements of the Departments of the United States affecting the construction of work, plants and vessels in or on navigable waters and the shores thereof, and all other waters subject to the control of the United States insofar as they apply to the work hereunder, and to procure at its own expense all permits from the United States, State and local authorities which may be necessary to begin and carry on the work hereunder, and at all times to comply with all United States, State and local laws in any way affecting the work carried on under this contract.

XXVII.

RATE OF WAGES.

The Contractor agrees that it will at all times pay the prevailing rate of wages, and that under no circumstances will it pay any wages in excess of the prevailing rate without first obtaining the writ-

ten approval of the Owner. The question of what is the prevailing rate and other questions with regard thereto are subject to the definition and interpretation of the Owner. If it should become necessary during the period of this contract to increase the wages of any of the employees of the Contractor, it should be done only with the written consent of the Owner first obtained, in which event the cost of such increase will be borne by the Owner, provided that any increase in wages or other increased cost on account of wages made without the written approval of the Owner shall be borne by the Contractor, and provided further that nothing herein shall be construed to prevent the Contractor from assigning work in divisions or pieces at prices or rates considered reasonable according to its present practice. If Sundays, holidays or overtime work be resorted to it shall be without additional cost to the Owner, unless specifically ordered by the Owner.

XXVIII.

This contract is executed and delivered upon the understanding that, if desired by the Owner, a provision satisfactory in form and terms to the Owner, restricting the hours of labor or laborers and mechanics employed by the Contractor or by sub-contractors and/or providing for the payment of extra compensation for overtime work, will be inserted in the contract with the same force and effects as if inserted in the contract before the execution and delivery thereof.

In witness whereof the parties hereto have caused these presents to be executed by their proper corporate officers and their corporate seals to be af-

fixed and attached as of the day and year first above stated.

BETHLEHEM SHIPBUILDING CORPORATION, LTD.

H. E. LEWIS
Vice-President.

(Corporate Seal)

Attest:

A. N. Roberts,
Assistant Secretary.

UNITED STATES SHIPPING BOARD
EMERGENCY FLEET CORPORATION,
Howard Coonley
Vice-President.

(Corporate Seal)

Attest:

C. Bradford Fraley
Asst. Secretary.

Approved as to form:

Date—6/15/18.
William H. White, Jr.,
Legal Division.

Approved,

T. Ed. Skeel,
Asst. Comptroller.

Approved:

Daniel H. Cox,
Manager Division of
Steel Ship Construction.

THE ANSWER AND COUNTERCLAIM OF THE DEFENDANT BETHLEHEM STEEL COMPANY TO THE BILL OF COMPLAINT

(Filed July 25, 1925)

The defendant Bethlehem Steel Company (hereinafter called the defendant), for its separate answer and counterclaim to the bill of complaint in the above entitled action, says:

First: Answering Article First of the bill of complaint, it admits the facts therein averred. The defendant Bethlehem Shipbuilding Corporation, Ltd., is hereinafter called Bethlehem Ship; the defendant Fore River Shipbuilding Corporation, Fore River; the defendant Union Iron Works Company, Union; Harlan & Hollingsworth Corporation, Harlan; and Samuel L. Moore & Sons Corporation, Moore.

Second: Answering Article Second of the bill of complaint, it admits that many of the contracts between Bethlehem Ship and United States Shipping Board Emergency Fleet Corporation (hereinafter called the Fleet Corporation) referred to in the bill of complaint were made, executed and delivered within the Eastern District of Pennsylvania, and that moneys of the Fleet Corporation paid in connection therewith were paid by the Fleet Corporation and received by Bethlehem Ship within the Eastern District of Pennsylvania. Except as so specifically ad-

mitted, it denies each and every averment of said Article Second.

Third: Answering Article Third of the bill of complaint, it admits the averments thereof.

Fourth: Answering Article Fourth of the bill of complaint, it admits the averments thereof.

Fifth: Answering Article Fifth of the bill of complaint, it admits that on April 16, 1917, pursuant to Section 11 of the Shipping Act of 1916, the United States Shipping Board caused the Fleet Corporation to be organized under the Act of Congress of March 3, 1901, entitled "An Act to Establish a Code of Law for the District of Columbia", and the provisions thereof relating to corporations to be organized in said District, and that such corporation has since existed and is now existing with such corporate powers as are specified in its certificate of incorporation, and in and by said Code of Law of the District of Columbia as limited and qualified by Section 11 of the Shipping Act of 1916, and Acts amendatory thereof. Except as so specifically admitted, it denies that it has any knowledge with respect to each and every averment of said Article Fifth.

Sixth: Answering Article Sixth of the bill of complaint, it admits the averments thereof.

Seventh: Answering Article Seventh of the bill of complaint, it admits the averments thereof.

Eighth: Answering Article Eighth of the bill of complaint, it admits the averments thereof.

Ninth: Answering Article Ninth of the bill of complaint, it admits the averments thereof.

Tenth: Answering Article Tenth of the bill of complaint, it admits that the Fleet Corporation, under its certificate of incorporation and under the Shipping Act of 1916, had no power or authority to bind the United States as its representative or agent or otherwise with respect thereto. Except as so specifically admitted, it denies each and every averment of said Article Tenth.

Eleventh: Answering Article Eleventh of the bill of complaint, it denies each and every averment thereof. It avers that each and all of the contracts referred to in the bill of complaint which were entered into, or signed by, or in the name of, the Fleet Corporation, were made and entered into by such corporation as principal and as the real party in interest thereunder and not as the agent of the complainant. It avers further that each and every action taken by the Fleet Corporation under each and all of such contracts was taken by such corporation as principal and as the real party in interest thereunder and not as the agent of the complainant, and that Bethlehem Ship, Fore River, Union and the defendant dealt with such corporation thereunder solely on such basis.

Twelfth: Answering Article Twelfth of the bill of complaint, it admits that the transactions between Bethlehem Ship and the Fleet Corporation referred to in the bill of complaint involved amounts greatly in excess of $50,000,000, and that the Shipping Act of 1916 was in full force and effect during the period in which the contracts between Bethlehem Ship and the Fleet Corporation and the supplements thereto referred to in the bill of complaint were made. Ex-

cept as so specifically admitted, it denies each and every averment of said Article Twelfth.

Thirteenth: Answering Article Thirteenth of the bill of complaint, it admits that the defendant Bethlehem Steel Corporation was incorporated under the laws of the State of New Jersey on or about December 10, 1904, in connection with the reorganization of United States Shipbuilding Company, and that on or about January 20, 1905, such defendant acquired the entire capital stocks (except qualifying shares held by the directors thereof) of the defendant, Union, Harlan and Moore, and of certain other corporations. Except as so specifically admitted, it denies each and every averment of said Article Thirteenth.

Fourteenth: Answering Article Fourteenth of the bill of complaint, it admits that prior to the transactions between Bethlehem Ship and the Fleet Corporation thereafter referred to in the bill of complaint, Penn Mary Steel Company, a Pennsylvania corporation, and a subsidiary of the defendant, owned, among other things, a shipbuilding plant at Sparrows Point, Maryland. Such plant was acquired by Penn Mary Steel Company from Maryland Steel Company, a Maryland corporation, on or about July 1, 1916 (retroactive to March 1, 1916), and immediately thereafter Penn Mary Steel Company leased such plant, together with certain other properties, to the defendant which thereafter and until on or about November 1, 1917, operated such plant. Maryland Steel Company was dissolved on or about November 4, 1919, and its assets taken over and its liabilities assumed by Penn Mary Steel Company as of July 1, 1916.

Prior to the transactions between Bethlehem Ship and the Fleet Corporation thereafter referred to in the bill of complaint, and until the acquisition thereof by Bethlehem Ship, Fore River owned a shipbuilding plant at Fore River, Massachusetts, which plant is now owned and operated by Bethlehem Ship.

On or about January 17, 1905, Union acquired all the properties of Union Iron Works and in 1909 acquired the capital stock of Union Iron Works Dry Dock Company, a California corporation. Prior to the transactions between Bethlehem Ship and the Fleet Corporation thereafter referred to in the bill of complaint, and until the operation thereof was taken over by Bethlehem Ship, Union operated a shipbuilding plant known as the Union plant at or near San Francisco, California.

Except as so specifically admitted, the defendant denies each and every averment of said Article Fourteenth.

Fifteenth: Answering Article Fifteenth of the bill of complaint, it admits that on or about August 3, 1917, the Fleet Corporation, purporting to act under the Act of June 15, 1917, and the Executive Order of July 11, 1917, served upon it an order purporting to requisition on behalf of the United States all power driven, cargo carrying and passenger vessels, above 2500 tons deadweight capacity, under construction in its yard, together with certain materials, machinery, equipment, outfit and commitments therefor necessary for the completion of such vessels, and it admits that thereafter the Fleet Corporation entered into a contract with it covering the completion of such vessels as hereinafter in Article

Fifty-fifth hereof set forth. It denies that it has any knowledge with respect to the averments of said Article Fifteenth that on or about August 3, 1917, the complainant acting through the Fleet Corporation (under such Act and Executive Order) requisitioned all vessels of over 2500 tons deadweight capacity then under construction in all shipyards throughout the United States. Except as so specifically admitted and except the averments with respect to which it has denied that it has any knowledge, it denies each and every averment of said Article Fifteenth.

Sixteenth: Answering Article Sixteenth of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Seventeenth: Answering Article Seventeenth of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Eighteenth: Answering Article Eighteenth of the bill of complaint, it admits that on or about October 29, 1917, Bethlehem Ship acquired from Penn Mary Steel Company the shipbuilding plant then operated by the defendant at Sparrows Point, Maryland, and that since such acquisition Bethlehem Ship has continuously operated such plant. It denies that it has any knowledge with respect to each and every averment of said Article Eighteenth as applied to the other defendants herein. Except as so specifically admitted and except the averments with respect to which it has denied that it has any knowledge, it denies each and every averment of said Article Eighteenth.

Nineteenth: Answering Article Nineteenth of the bill of complaint, it admits that on or about November 1, 1917, Bethlehem Ship entered into an agreement with it whereby Bethlehem Ship undertook to perform all of its outstanding contracts with the Fleet Corporation for the construction of vessels covered by such requisition order of August 3, 1917, and it admits that, with the consent of the Fleet Corporation, Bethlehem Ship thereafter entered into and continued in the performance of such contracts and of contracts made in substitution or modification thereof during the period referred to in the bill of complaint; all as in Article Fifty-sixth hereof set forth. It denies that it has any knowledge with respect to each and every averment of said Article Nineteenth as applied to the other defendants herein. Except as so specifically admitted and except the averments with respect to which it has denied that it has any knowledge, it denies each and every averment of said Article Nineteenth.

Twentieth: Answering Article Twentieth of the bill of complaint, it admits that at the time of the making of the contracts between Bethlehem Ship and the Fleet Corporation thereafter referred to in the bill of complaint, it knew what the cost of building the various types of steel vessels which had prior thereto been built by it had been, and it admits that at such time Bethlehem Ship maintained at the Sparrows Point plant an organization engaged in the building of vessels. It admits that at the same time the defendant Bethlehem Steel Corporation owned its capital stock and that by reason thereof such defendant became entitled to dividends as and when declared from its net earnings. It denies that it has

any knowledge with respect to each and every averment of said Article Twentieth as applied to the other defendants herein. Except as so specifically admitted and except the averments with respect to which it has denied that it has any knowledge, it denies each and every averment of said Article Twentieth.

Twenty-first: Answering Article Twenty-first of the bill of complaint, it admits that immediately after the incorporation thereof, Bethlehem Ship took over a large part of the organization and personnel of Harlan, Moore, Fore River and Union and of the Sparrows Point plant acquired as aforesaid. It admits that upon the organization of Bethlehem Ship, and prior to the making of the contracts between the Fleet Corporation and Bethlehem Ship dated December 31, 1917, thereafter referred to in the bill of complaint, the general basis of the organization of Bethlehem Ship was, and continued thereafter to be, substantially as follows: The shipbuilding plant at Wilmington, Delaware, which formerly belonged to Harlan, was operated and known as the Harlan plant. The shipbuilding plant at Elizabethport, New Jersey, which formerly belonged to Moore, was operated and known as the Moore plant. The shipbuilding plant at Fore River, Massachusetts, was operated and known as the Fore River plant. The shipbuilding plant at Sparrows Point, Maryland, was operated and known as the Sparrows Point plant. And the plants on the Pacific Coast formerly operated by the defendant Union and by Union Iron Works Dry Dock Company, were operated and known as the Union plant. The defendant denies that it has any knowledge with respect to the averments of said

Article Twenty-first that neither the complainant, nor the Fleet Corporation, nor the United States Shipping Board, nor any members of the organization of either of said bodies (except, as thereafter in the bill of complaint stated, Charles M. Schwab), were entirely familiar with, and had special expert knowledge of, the actual and probable cost of building such vessels and of estimating the profits to be derived therefrom.

The defendant admits that in November and December, 1917, and at various times thereafter the Government undertook to fix the rates of wages payable to labor engaged in shipbuilding work for the Government and for the Fleet Corporation, and that such action of the Government was known to the defendant.

Except as so specifically admitted and except the averments with respect to which it has denied that it has any knowledge, it denies each and every averment of said Article Twenty-first.

Twenty-second: Answering Article Twenty-second of the bill of complaint, it admits that because of the necessity for constructing vessels to meet the emergencies and requirements of the war, particularly the enormous loss of vessels caused by the unrestricted submarine warfare undertaken by the German Empire, an extraordinary emergency of the war existed and rendered it necessary for the Government to control generally the entire shipbuilding, steel, coal, transportation and other industries of the United States and to obtain as many vessels as it was possible for each shipbuilder of the country to construct, and to have the same constructed in the

least possible period of time, and it admits that these conditions and this emergency were known to the public in general and to the defendant. It avers that such extraordinary emergency and the conditions and circumstances resulting therefrom were better known to the Fleet Corporation and to the complainant than they were to the defendant. Except as so specifically admitted, it denies each and every averment of said Article Twenty-second.

Twenty-third: Answering Article Twenty-third of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Twenty-fourth: Answering Article Twenty-fourth of the bill of complaint, it admits that Bethlehem Ship was obligated to perform each and all of its contracts fairly and honestly in accordance with their terms. Except as so specifically admitted, it denies each and every averment thereof.

Twenty-fifth: Answering Article Twenty-fifth of the bill of complaint, it denies that it has any knowledge with respect to the averments thereof that during the period in which the contracts thereafter in the bill of complaint referred to were entered into, the Government of the United States, acting under its constitutional powers, had in other instances fixed and limited the profit to be made by other shipbuilders constructing similar ships under similar circumstances, and in the vicinity of the various shipbuilding plants so operated by the defendants, at a sum not to exceed ten per cent. (10%) of the actual cost thereof, and in many instances at a sum much less than ten per cent. (10%) of the actual cost thereof.

Except as aforesaid, it denies each and every averment of said Article Twenty-fifth.

Twenty-sixth: Answering Article Twenty-sixth of the bill of complaint, it admits that on or about April 16, 1918, Charles M. Schwab, at the request of the President of the United States, entered upon the office of Director General of the Fleet Corporation and continued in that office until December 12, 1918.

It admits that during the time that Charles M. Schwab was Director General of the Fleet Corporation he was a stockholder and Chairman of the Board of Directors of the defendant Bethlehem Steel Corporation, and that during such period Joseph W. Powell was a Vice-President of Bethlehem Ship and, as such, in charge generally of the contracts referred to in the bill of complaint and of the performance thereof. It admits that during such period Charles M. Schwab took no official action with regard to such contracts, and refrained from questioning the provisions of some of such contracts with respect to the fixed fee for profit and the sharing of the difference between the estimated cost and the actual cost of the vessels constructed thereunder. It denies that it has any knowledge with respect to the averments of said Article Twenty-sixth as applied to the other defendants herein.

Except as so specifically admitted and except the averments with respect to which it has denied that it has any knowledge, it denies each and every averment of said Article Twenty-sixth.

Twenty-seventh: Answering Article Twenty-seventh of the bill of complaint, it admits that during

the time that Charles M. Schwab was Director General of the Fleet Corporation the defendant Bethlehem Steel Corporation owned the capital stock of Bethlehem Ship, Fore River, Union and the defendant, and by virtue thereof had stock control of such corporations. Except as so specifically admitted, it denies each and every averment of said Article Twenty-seventh.

Twenty-eighth: Answering Article Twenty-eighth of the bill of complaint, it denies each and every averment thereof.

Twenty-ninth; Answering Article Twenty-ninth of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Thirtieth: Answering Article Thirtieth of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Thirty-first: Answering Article Thirty-first of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Thirty-second: Answering Article Thirty-second of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Thirty-third: Answering Article Thirty-third of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Thirty-fourth: Answering Article Thirty-fourth of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Thirty-fifth: Answering Article Thirty-fifth of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Thirty-sixth: Answering Article Thirty-sixth of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Thirty-seventh: Answering Article Thirty-seventh of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Thirty-eighth: Answering Article Thirty-eighth of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Thirty-ninth: Answering Article Thirty-ninth of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Fortieth: Answering Article Fortieth of the bill of complaint, it admits that after the issuance and service upon it of the requisition order of August 3, 1917, and on or about August 22, 1917, the Fleet Corporation ordered it to complete the vessels covered by such requisition order substantially in accordance with the plans and specifications provided

by the original contracts for such vessels between it and the former owners thereof and agreed to pay for the work of such completion the amounts specified in such original contracts then unpaid, and it admits that such order dated August 22, 1917, was accepted by it on such condition and that the completion of such vessels was subsequently taken over by Bethlehem Ship which completed such vessels and delivered the same to or on the order of the Fleet Corporation; but it refers to the averments of Articles Fifty-fifth and Fifty-sixth hereof set forth for a true and correct statement of the nature and effect of such transactions. Except as so specifically admitted, it denies each and every averment of said Article Fortieth.

Forty-first: Answering Article Forty-first of the bill of complaint, it admits that Exhibit D to the bill of complaint correctly lists the vessels under construction at its plant and included in such requisition order of August 3, 1917, and, to the extent that such figures are the same as those shown on Exhibit 1 hereto, the total amounts paid by the former owners and the Fleet Corporation to it and Bethlehem Ship on account of the construction of such vessels, but it refers to Exhibit 1 hereto (being Exhibit 3 to the Answer of Bethlehem Ship on file in this action) and to the averments of Articles Fifty-fourth to Sixty-fifth, inclusive, hereof, for a correct statement of the transactions and accounts between the Fleet Corporation and it and Bethlehem Ship on account of the construction of such vessels. Except as so specifically admitted, it denies that it has any knowledge with respect to each and every averment of said Article Forty-first.

Forty-second: Answering Article Forty-second of the bill of complaint, it admits that its original contracts under which the vessels listed in Exhibit 1 hereto opposite its name were being constructed by it for the former owners thereof (except two) were on a lump sum basis and not on the basis of cost plus a percentage for profit and that it was not entitled under such contracts to additional compensation for overtime work on such construction. It denies that it has any knowledge with respect to each and every averment of said Article Forty-second as applied to the other defendants herein. Except as so specifically admitted and except the averments with respect to which it has denied that it has any knowledge, it denies each and every averment of said Article Forty-second.

Forty-third: Answering Article Forty-third of the bill of complaint, it admits that during the war the Government, in furtherance of the war shipbuilding program, directed that, with respect to all shipbuilding work carried on for the Government and for the Fleet Corporation, eight hours per day should constitute the normal time of employment for labor, and that for all labor employed over eight hours in any day a bonus at times of fifty per cent. (50%) and at other times of one hundred per cent. (100%) should be paid, and that all work on Saturday afternoons, Sundays and holidays should be deemed to be overtime and that with respect thereto a bonus of one hundred per cent. (100%) per hour should be paid, and it admits that the basis of compensation for such overtime is commonly known as "time and a half" and "double time" according as the bonus is fifty per cent. (50%) or one hundred per cent.

(100%): Except as so specifically admitted, it denies each and every averment of said Article Forty-third.

Forty-fourth: Answering Article Forty-fourth of the bill of complaint, it admits that after the date of the requisition of the vessels under construction by it and before the completion of such vessels was undertaken by Bethlehem Ship, a contract was entered into between it and the Fleet Corporation for the completion of such vessels as hereinafter in Article Fifty-fifth hereof set forth. It admits that subsequently and on or about November 1, 1917, it entered into an agreement with Bethlehem Ship, as hereinafter in Article Fifty-sixth hereof set forth. It denies that it has any knowledge with respect to each and every averment of said Article Forty-fourth as applied to the other defendants herein. Except as so specifically admitted and except the averments with respect to which it has denied that it has any knowledge, it denies each and every averment of said Article Forty-fourth.

Forty-fifth: Answering Article Forty-fifth of the bill of complaint, it admits that during the period of construction of the vessels covered by such requisition order it and Bethlehem Ship employed overtime in the construction thereof. It denies that it has any knowledge with respect to each and every averment of said Article Forty-fifth as applied to the other defendants herein. Except as so specifically admitted and except the averments with respect to which it has denied that it has any knowledge, it denies each and every averment of said Article Forty-fifth.

Forty-sixth: Answering Article Forty-sixth of the bill of complaint, it admits that the "overtime co-efficient" which was adopted and applied to overtime at its plant and which the Fleet Corporation agreed to pay as hereinafter in Article Fifty-seventh hereof set forth, was arrived at as follows (the computations for convenience being reduced to units of a dollar):

"TIME AND A HALF."

Shipbuilder pays workmen for overtime of two hours:

(a) At regular rate of $1 per hour (The shipbuilder is not reimbursed payments under (a) except to the extent that they are covered by lump sum prices.)	$2.00
(b) As overtime bonus for two hours at 50% of regular rate (reimbursed by Fleet Corporation)	1.00
Total paid by shipbuilder to workmen for overtime and bonus	$3.00

Shipbuilder receives from the Fleet Corporation under co-efficient of 2.625, the following:

(1) Overtime bonus, as above	$1.00
(2) Loss in workmen's efficiency ⅜ of normal rate of $1 an hour for two hours	.75
Total of factors (1) and (2)	$1.75
(3) For increase in overhead cost and decrease in overhead efficiency 50% of	

item No. 1 above plus 50% of item No. 2 above	.875
Total charged by shipbuilder to the Fleet Corporation for each two hours overtime	$2.625

It denies that it has any knowledge with respect to each and every averment of said Article Forty-sixth as applied to the other defendants herein. Except as so specifically admitted and except the averments with respect to which it has denied that it has any knowledge, it denies each and every averment of said Article Forty-sixth.

Forty-seventh: Answering Article Forty-seventh of the bill of complaint, it denies each and every averment thereof.

Forty-eighth: Answering Article Forty-eighth of the bill of complaint, it admits that from time to time Bethlehem Ship included in its statements to the Fleet Corporation on account of the "overtime co-efficient" the amounts specified in column K of Exhibit 1 hereto. Except as so specifically admitted, it denies each and every averment of said Article Forty-eighth.

Forty-ninth: Answering Article Forty-ninth of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Fiftieth: Answering Article Fiftieth of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Fifty-first: Answering Article Fifty-first of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Fifty-second: Answering Article Fifty-second of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof as applied to the other defendants herein, and as applied to it, it denies each and every averment thereof.

Fifty-third: Answering Article Fifty-third, being advised that it is not required to admit or deny the conclusions of law in said Article pleaded, it neither admits nor denies the averments of said Article.

As a general defense to each and every claim of the complainant against it, and by way of explanation of the transactions in which it is in any way involved, as set forth in the Bill of Complaint, the defendant, hereby reiterating each and every denial and averment hereinbefore contained, further says:

Fifty-fourth: On or about the dates, respectively, listed in column C of Exhibit 1 hereto, the defendant and the former owners, respectively, listed in column B thereof, made and entered into written contracts covering the construction of the vessels included in such requisition order in Article Fifteenth hereof mentioned and listed in column D of such Exhibit 1 opposite its name in column A thereof. Such Exhibit 1 is the same as Exhibit 3 annexed to the Answer of Bethlehem Ship on file in this action. Copies of such contracts (hereinafter called the original contracts), without the plans and specifications therein

referred to, marked Exhibits 50 to 56, inclusive, respectively, are annexed to such Answer of Bethlehem Ship and are made a part hereof as if herein fully set forth, and the defendant prays leave to refer on the trial of this action to such plans and specifications.

Fifty-fifth: Upon the requisition of such vessels as in Article Fifteenth hereof set forth, and on or about October 10, 1917, the defendant and the Fleet Corporation, acting as principal and not as the agent of the complainant, entered into a contract in writing whereby the defendant agreed to complete such vessels for the Fleet Corporation in conformity with the requirements of the original contracts and the plans and specifications therein referred to in so far as the original contracts describe such vessels, the materials, equipment, outfit, workmanship, insurance, classification and survey thereof, including the meeting of the requirements of the original contracts and all tests as to efficiency and capacity of the vessels on completion, and in so far as the original contracts contain provisions for the benefit and protection of the former owners, but not otherwise; and on final acceptance of each such vessel, to give a bill of sale to the United States in satisfactory form conveying all its right, title and interest in such vessel, together with its certificate that such vessel was then free from liens, claims or equities with the exception of those of the former owner, and then only those set forth in the original contract therefor; and whereby the Fleet Corporation agreed that it would pay to the defendant for the work of such completion, amounts equal to the payments set forth in the original contracts and not

then paid. The Fleet Corporation also agreed that upon the completion of such vessels a complete audit of the items which should go to make up the price of such vessels would be made by the Fleet Corporation and that thereupon the balance determined to be due on such vessels should become immediately due and payable. Each and every action taken by the Fleet Corporation under such contract in this Article mentioned was taken by it as principal and as the real party in interest thereunder and not as the agent of the complainant, and the defendant at all times dealt with such corporation solely on such basis.

Fifty-sixth: Thereafter, and on or about October 29, 1917, Bethlehem Ship acquired the shipbuilding plant operated by the defendant and, at the same time, made and entered into an agreement with the defendant whereby Bethlehem Ship became obligated as the defendant's agent to perform all of the defendant's contracts listed in such Exhibit 1, and became entitled to the benefits theretofore accrued and, thereafter to accrue under such contracts; and Bethlehem Ship, with the approval of the Fleet Corporation, took over and proceeded with the completion of the vessels covered by such contracts, in accordance with the terms and provisions of the contract between the defendant and the Fleet Corporation in Article Fifty-fifth hereof set forth.

Fifty-seventh: Thereafter, from time to time, the Fleet Corporation directed Bethlehem Ship to employ overtime in the construction of Hulls numbered 169, 170, and 172-175, inclusive, and on or about the 11th day of January, 1918, agreed that it would

pay to Bethlehem Ship in respect of such overtime, in addition to all other payments theretofore agreed to be paid on account of such vessels, amounts equal to 2.625 (called the "overtime co-efficient") times the bonus (i. e. the excess of wages at overtime rates as established from time to time under governmental direction over wages at regular rates so established) paid by Bethlehem Ship to its employees in respect of such overtime. Bethlehem Ship in accordance with such agreement and at the direction of the Fleet Corporation, from time to time, employed overtime in the construction of such vessels and in that connection paid to its employees bonuses the aggregates of which times the applicable overtime co-efficient amounted to the sums set forth in column K of such Exhibit 1 hereto.

Fifty-eighth: Thereafter, and on or about June 17, 1918, Bethlehem Ship and the Fleet Corporation entered into an agreement, whereby the Fleet Corporation agreed to reimburse Bethlehem Ship, on the terms and conditions therein set forth, for certain payments which, to expedite the completion of Hulls numbered 169-170 and 172-175, inclusive, Bethlehem Ship proposed to make to its foremen, assistant foremen, leading men and other heads of departments. The amounts which were so paid by Bethlehem Ship and which the Fleet Corporation agreed to reimburse to Bethlehem Ship as aforesaid, are as set forth in column L of such Exhibit 1.

Fifty-ninth: From time to time during the period of construction of Hulls numbered 167, 169, 170 and 172-175, inclusive, the former owners, and later, the Fleet Corporation, under and pursuant to the terms

of the contracts therefor, directed that certain additions to and omissions from the plans and specifications therefor be made and such additions to and omissions from such plans and specifications were made in accordance with the orders and directions of the former owners and, later, the Fleet Corporation as aforesaid. The net cost of such additions and omissions, which by the provisions of such contracts it was agreed should be added to the price of each such vessel was as set forth in column J of such Exhibit 1.

Sixtieth: From time to time during the period of construction of Hulls numbered 169-170 and 174-175, inclusive, the rates of wages paid by the defendant and, later by Bethlehem Ship in the construction of such vessels exceeded by more than ten per cent. (10%) the rates of wages which were paid by the defendant at the date of the original contracts therefor. Sixty cents ($.60) per deadweight ton for each one per cent, (1%) so paid in excess of ten per cent. (10%) over the rates of wages at the date of such contracts, respectively, paid by the defendant amounted to the sums specified in column M of such Exhibit 1.

Sixty-first: In the case of Hulls numbered 169-170, 173 and 174-175, inclusive, the original contracts therefor provided that the purchaser would pay to the shipbuilder for each ton that the deadweight carrying capacity of each such vessel should exceed the guaranteed deadweight carrying capacity thereof, respectively, the amounts specified in such contracts. Upon the completion of such vessels they, respectively, had the deadweight carrying capacity

specified in column F of such Exhibit 1 and there became due from the Fleet Corporation on account thereof the amounts specified in column N of such Exhibit 1.

Sixty-second: Bethlehem Ship completed such vessels so included in such requisition order and listed in column D of such Exhibit 1 in accordance with the plans and specifications therefor and delivered such vessels complete in accordance with the orders of the Fleet Corporation afloat at the Sparrows Point plant on or about the dates listed in such Exhibit 1, and the Fleet Corporation thereupon took possession of and accepted such vessels. The defendant and Bethlehem Ship duly performed all the terms and conditions of all the contracts therefor on their part to be performed, and the Fleet Corporation took possession of and accepted such vessels as constructed in accordance with such plans and specifications and in accordance with the terms and conditions of such contracts.

Sixty-third: After the completion and delivery of the vessels and the acceptance thereof by the Fleet Corporation as aforesaid, a complete audit of the items of cost incurred in the construction of such vessels was made by the Fleet Corporation and completed on or about the first day of September, 1922. On such audit the Fleet Corporation found the amounts which had become payable by it to the defendant and/or Bethlehem Ship on account of the construction of such vessels to be as set forth in column I, J, K, L, M, N, O, P and Q of such Exhibit 1.

Sixty-fourth: From time to time during and after the period of construction thereof, the former

owners, and, later, the Fleet Corporation, paid to the defendant and, later, to Bethlehem Ship, amounts on account of the construction of such vessels, the aggregates of which are as set forth in column R of such Exhibit 1.

Sixty-fifth: Although duly requested, the Fleet Corporation has failed and refused to pay on account of the construction of such vessels, the amounts set forth in column S of such Exhibit 1 and such amounts together with interest thereon from September 1, 1922, are now due and owing from the Fleet Corporation to Bethlehem Ship.

As a separate and special defense to each and every claim of the complainant based upon the averments of Articles Twenty-sixth, Twenty-seventh, Twenty-eighth, Twenty-ninth and the last sentence of Article Forty-ninth of the Bill of Complaint, the defendant, hereby reiterating each and every denial and averment hereinbefore contained, but in addition thereto, says:

Sixty-sixth: At the instance of the United States Shipping Board, and especially of Edward N. Hurley, its Chairman, and Bainbridge Colby, one of its members, Charles M. Schwab was invited by President Wilson to become Director General of the Fleet Corporation at a time of an acute crisis in its affairs and for the special purpose of speeding up its ship construction program. Charles M. Schwab objected to accepting the appointment, giving as one reason that he could be of more service as the head of the Bethlehem enterprises, and as a second reason that he could not entirely divest himself of his relations with Bethlehem. He was assured, how-

ever, by President Wilson and Messrs. Hurley and Colby that he need have no fear on account of his relations with Bethlehem, and he finally yielded to their urgings upon the express understanding and agreement that while Director General of the Fleet Corporation he was not to participate in any way in transactions between the Fleet Corporation and the defendants herein.

Sixty-seventh: In pursuance of such understanding and agreement and promptly after taking office, he wrote to the President and Trustees of the Fleet Corporation a letter, of which the following is a copy:

"April 30, 1918.

"To the President and Trustees of the
United States Shipping Board Emergency
Fleet Corporation:

Dear Sirs:

The United States Shipping Board Emergency Fleet Corporation, of which I have been appointed Director General, has, or may in the future have, contracts or other business relations not only with the Bethlehem Steel Corporation, of which I am an officer, director and stockholder, but also with certain of its subsidiary companies in which I am directly or indirectly interested.

I am of the opinion that it would be inadvisable for me to participate, as such Director General, in the transaction of any business between the Emergency Fleet Corporation and any of the said companies, with special refer-

ence to the making of contracts with, or the giving of orders to, such companies, and, therefore, request that all business between the United States Shipping Board Emergency Fleet Corporation and the companies named below may be handled entirely by such other officers or agents of the Emergency Fleet Corporation as you may designate.

Bethlehem Steel Corporation,
Bethlehem Steel Company,
Bethlehem Steel Bridge Corporation,
Bethlehem Loading Company,
Fore River Shipbuilding Corporation,
The Detrick & Harvey Machine Company,
Bethlehem Steel Products Company,
Ore Steamship Corporation,
Saucon Land & Improvement Company,
Bethlehem Securities Company,
Bethlehem Shipbuilding Corporation, Ltd.,
Union Iron Works Company,
Union Iron Works Dry Dock Company.

Yours very truly,

CE-MS (Sgd) C. M. Schwab."

Sixty-eighth: Immediately thereafter, on May 2, 1918, in accordance with such understanding and agreement, the Board of Trustees of the Fleet Corporation formally incorporated such letter into their minutes, and at the same time by resolution provided that all contracts before execution should be submitted to such Board for their approval. A copy of such resolution is as follows:

"Resolved that all contracts of the United States Shipping Board Emergency Fleet Cor-

poration, after they are approved by the Vice-President and Secretary, whether for the Operating or Construction Divisions, be submitted to the Board of Trustees for their approval and then approved by the officers of the Corporation authorized by the Board of Trustees and formally executed."

Charles M. Schwab was never at any time a member of the Board of Trustees of the Fleet Corporation.

Sixty-ninth: Charles M. Schwab faithfully carried out such understanding and agreement and did not at any time take any part in the relations between the Fleet Corporation and the defendants herein.

Insufficiency of Bill of Complaint

Seventieth: Further answering the bill of complaint, and in lieu of motions to dismiss the bill of complaint or parts thereof before answer, the defendant says that the complainant is not entitled to recover of the defendant in this action because it has not stated facts sufficient to constitute a valid cause of action in equity against the defendant, and that the complainant is not the proper party to bring this action.

Claim for Credit

Seventy-first: Not waiving but insisting on the defenses hereinbefore pleaded, but in addition thereto, the defendant repeats and reavers each and

every averment of Articles Fifty-fourth to Sixty-fifth, inclusive, hereof with the same force and effect as if herein again alleged in full and says that Bethlehem Ship has duly presented to the Fleet Corporation and to the United States Shipping Board all of the defendant's and/or Bethlehem Ship's claims on account of the transactions in said Articles set forth and the Fleet Corporation and said Shipping Board have disallowed such claims, and that if the complainant shall be found entitled to bring this action in its own name and to recover therein, any amount or amounts to which the complainant may become entitled on account of any of the transactions herein set forth, should be reduced by the amounts now due and owing from the Fleet Corporation hereinbefore set forth, so that the complainant should recover nothing.

Counterclaim

Seventy-second: Not waiving but insisting on the defenses pleaded in the foregoing Answer, but in addition thereto, the defendant repeats and reavers the averments in Articles Fifty-fourth to Sixty-fifth, inclusive, hereof set forth with the same force and effect as if herein again averred in full, and says that if the complainant shall be found entitled to bring this action in its own name, the defendant should recover of the complainant the sum of Eight hundred fifty-two thousand four hundred one dollars and thirty-five cents ($852,401.35), together with interest thereon from September 1, 1922, and the costs and disbursements of this action.

Wherefore, the defendant prays:

1. That the bill of complaint be, in all respects, dismissed, with the costs of this action.

2. That if the above prayer be not granted, then that the defendant recover of the complainant the sum of Eight hundred fifty-two thousand four hundred one dollars and thirty-five cents ($852,401.35), together with interest thereon from September 1, 1922, and the costs and disbursements of this action.

3. That the defendant have such other and further relief as may be just and equitable.

CHARLES SINKLER,
Solicitor for the Defendant
Bethlehem Steel Company

CRAVATH, HENDERSON & DE GERSDORFF,
of Counsel.

July 25, 1925.

THE ANSWER OF THE DEFENDANT FORE RIVER SHIPBUILDING CORPORATION TO THE BILL OF COMPLAINT

(Filed July 25, 1925)

The defendant Fore River Shipbuilding Corporation (hereinafter called the defendant), for its separate answer to the bill of complaint in the above entitled action, says:

First: Answering Article First of the bill of complaint, it admits the facts therein averred. The defendant Bethlehem Shipbuilding Corporation, Ltd., is hereinafter called Bethlehem Ship; the defendant Union Iron Works Company, Union; Harlan & Hollingsworth Corporation, Harlan; and Samuel L. Moore & Sons Corporation, Moore.

Second: Answering Article Second of the bill of complaint it admits that many of the contracts between Bethlehem Ship and United States Shipping Board Emergency Fleet Corporation (hereinafter called the Fleet Corporation) referred to in the bill of complaint were made, executed and delivered within the Eastern District of Pennsylvania, and that moneys of the Fleet Corporation paid in connection therewith were paid by the Fleet Corporation and received by Bethlehem Ship within the Eastern District of Pennsylvania. It denies that it has any knowledge with respect to the averments of said Article Second that the defendant Bethlehem Steel Company is jointly liable with Bethle-

hem Ship with respect to certain of the causes of action averred in the bill of complaint, and particularly with respect to part of the causes of action averred in Articles Forty-second to Fifty-second, inclusive, of such bill. Except as so specifically admitted and except the averments with respect to which it has denied that it has any knowledge, it denies each and every averment of said Article Second.

Third: Answering Article Third of the bill of complaint, it admits the averments thereof.

Fourth: Answering Article Fourth of the bill of complaint, it admits the averments thereof.

Fifth: Answering Article Fifth of the bill of complaint, it admits that on April 16, 1917, pursuant to Section 11 of the Shipping Act of 1916, the United States Shipping Board caused the Fleet Corporation to be organized under the Act of Congress of March 3, 1901, entitled "An Act to Establish a Code of Law for the District of Columbia", and the provisions thereof relating to corporations to be organized in said District, and that such corporation has since existed and is now existing with such corporate powers as are specified in its certificate of incorporation, and in and by said Code of Law of the District of Columbia as limited and qualified by Section 11 of the Shipping Act of 1916, and Acts amendatory thereof. Except as so specifically admitted, it denies that it has any knowledge with respect to each and every averment of said Article Fifth.

Sixth: Answering Article Sixth of the bill of complaint, it admits the averments thereof.

Seventh: Answering Article Seventh of the bill of complaint, it admits the averments thereof.

Eighth: Answering Article Eighth of the bill of complaint, it admits the averments thereof.

Ninth: Answering Article Ninth of the bill of complaint, it admits the averments thereof.

Tenth: Answering Article Tenth of the bill of complaint, it admits that the Fleet Corporation, under its certificate of incorporation and under the Shipping Act of 1916, had no power or authority to bind the United States as its representative or agent or otherwise with respect thereto. Except as so specifically admitted, it denies each and every averment of said Article Tenth.

Eleventh: Answering Article Eleventh of the bill of complaint, it denies each and every averment thereof. It avers that each and all of the contracts referred to in the bill of complaint which were entered into, or signed by, or in the name of, the Fleet Corporation, were made and entered into by such corporation as principal and as the real party in interest thereunder and not as the agent of the complainant. It avers further that each and every action taken by the Fleet Corporation under each and all of such contracts was taken by such corporation as principal and as the real party in interest thereunder and not as the agent of the complainant, and that Bethlehem Ship, Union, the defendant Bethlehem Steel Company and the defendant dealt with such corporation thereunder solely on such basis.

Twelfth: Answering Article Twelfth of the bill of complaint, it admits that the transactions between

Bethlehem Ship and the Fleet Corporation referred to in the bill of complaint involved amounts greatly in excess of $50,000,000, and that the Shipping Act of 1916 was in full force and effect during the period in which the contracts between Bethlehem Ship and the Fleet Corporation and the supplements thereto referred to in the bill of complaint were made. Except as so specifically admitted, it denies each and every averment of said Article Twelfth.

Thirteenth: Answering Article Thirteenth of the bill of complaint, it admits that the defendant Bethlehem Steel Corporation was incorporated under the laws of the State of New Jersey or on about December 10, 1904, in connection with the reorganization of United States Shipbuilding Company, and that on or about January 20, 1905, such defendant acquired the entire capital stocks (except qualifying shares held by the directors thereof) of the defendant Bethlehem Steel Company, Union, Harlan and Moore, and of certain other corporations. Except as so specifically admitted, it denies each and every averment of said Article Thirteenth.

Fourteenth: Answering Article Fourteenth of the bill of complaint, it admits that prior to the transactions between Bethlehem Ship and the Fleet Corporation thereafter referred to in the bill of complaint, and until the acquisition thereof by Bethlehem Ship, the defendant owned a shipbuilding plant at Fore River, Massachusetts, which plant is now owned and operated by Bethlehem Ship. The defendant denies that it has any knowledge with respect to the averments of said Article Fourteenth as applied to the other defendants herein.

Except as so specifically admitted and except the averments with respect to which it has denied that it has any knowledge, the defendant denies each and every averment of said Article Fourteenth.

Fifteenth: Answering Article Fifteenth of the bill of complaint, it admits that on or about August 3, 1917, the Fleet Corporation, purporting to act under the Act of June 15, 1917, and the Executive Order of July 11, 1917, served upon it an order purporting to requisition on behalf of the United States all power driven, cargo-carrying and passenger vessels, above 2500 tons dead-weight capacity, under construction in its yard, together with certain materials, machinery, equipment, outfit and commitments therefor necessary for the completion of such vessels, and it admits that thereafter the Fleet Corporation entered into a contract with it covering the completion of such vessels as hereinafter in Article Fifty-fifth hereof set forth. It denies that it has any knowledge with respect to the averments of said Article Fifteenth that on or about August 3, 1917, the complainant acting through the Fleet Corporation (under such Act and Executive Order) requisitioned all vessels of over 2500 tons dead-weight capacity then under construction in all shipyards throughout the United States. Except as so specifically admitted and except the averments with respect to which it has denied that it has any knowledge, it denies each and every averment of said Article Fifteenth.

Sixteenth: Answering Article Sixteenth of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Seventeenth: Answering Article Seventeenth of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Eighteenth: Answering Article Eighteenth of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Nineteenth: Answering Article Nineteenth of the bill of complaint, it admits that on or about November 1, 1917, it leased its plant to Bethlehem Ship and that from the effective date of such lease Bethlehem Ship has operated such plant. It admits that on or about the same date Bethlehem Ship entered into an agreement with it whereby Bethlehem Ship undertook to perform all of its outstanding contracts with the Fleet Corporation for the construction of vessels covered by such requisition order of August 3, 1917, and it admits that, with the consent of the Fleet Corporation, Bethlehem Ship thereafter entered into and continued in the performance of such contracts and of contracts made in substitution or modification thereof during the period referred to in the bill of complaint; all as in Article Fifty-sixth hereof set forth. It denies that it has any knowledge with respect to each and every averment of said Article Nineteenth as applied to the other defendants herein. Except as so specifically admitted and except the averments with respect to which it has denied that it has any knowledge, it denies each and every averment of said Article Nineteenth.

Twentieth: Answering Article Twentieth of the bill of complaint, it admits that at the time of the

making of the contracts between Bethlehem Ship and the Fleet Corporation thereafter referred to in the bill of complaint, it knew what the cost of building the various types of steel vessels which had prior thereto been built by it had been, and it admits that at such time Bethlehem Ship maintained at the Fore River plant an organization engaged in the building of vessels. It admits that the defendant Bethlehem Steel Corporation has since about May 2, 1918, owned its capital stock, and that by reason thereof such defendant has been since such time entitled to dividends as and when declared from its net earnings. It denies that it has any knowledge with respect to each and every averment of said Article Twentieth as applied to the other defendants herein. Except as so specifically admitted and except the averments with respect to which it has denied that it has any knowledge, it denies each and every averment of said Article Twentieth.

Twenty-first: Answering Article Twenty-first of the bill of complaint, it admits that immediately after the incorporation thereof, Bethlehem Ship took over a large part of the organization and personnel of Harlan, Moore, Union and the defendant and of the Sparrows Point plant acquired as aforesaid. It admits that upon the organization of Bethlehem Ship, and prior to the making of the contracts between the Fleet Corporation and Bethlehem Ship dated December 31, 1917, thereafter referred to in the bill of complaint, the general basis of the organization of Bethlehem Ship was, and continued thereafter to be, substantially as follows: The shipbuilding plant at Wilmington, Delaware, which formerly belonged to Harlan, was operated and known as the

Harlan plant. The shipbuilding plant at Elizabethport, New Jersey, which formerly belonged to Moore, was operated and known as the Moore plant. The shipbuilding plant at Fore River, Massachusetts, was operated and known as the Fore River plant. The shipbuilding plant at Sparrows Point, Maryland, was operated and known as the Sparrows Point plant. And the plants on the Pacific Coast formerly operated by the defendant Union and by Union Iron Works Dry Dock Company, were operated and known as the Union plant. The defendant denies that it has any knowledge with respect to the averments of said Article Twenty-first that neither the complainant, nor the Fleet Corporation, nor the United States Shipping Board, nor any members of the organization of either of said bodies (except, as thereafter in the bill of complaint stated, Charles M. Schwab), were entirely familiar with, and had special expert knowledge of, the actual and probable cost of building such vessels and of estimating the profits to be derived therefrom.

The defendant admits that in November and December, 1917, and at various times thereafter the Government undertook to fix the rates of wages payable to labor engaged in shipbuilding work for the Government and for the Fleet Corporation, and that such action of the Government was known to the defendant.

Except as so specifically admitted and except the averments with respect to which it has denied that it has any knowledge, it denies each and every averment of said Article Twenty-first.

Twenty-second: Answering Article Twenty-second of the bill of complaint, it admits that because of the necessity for constructing vessels to meet the emergencies and requirements of the war, particularly the enormous loss of vessels caused by the unrestricted submarine warfare undertaken by the German Empire, an extraordinary emergency of the war existed and rendered it necessary for the Government to control generally the entire shipbuilding, steel, coal, transportation and other industries of the United States and to obtain as many vessels as it was possible for each shipbuilder of the country to construct, and to have the same constructed in the least possible period of time, and it admits that these conditions and this emergency were known to the public in general and to the defendant. It avers that such extraordinary emergency and the conditions and circumstances resulting therefrom were better known to the Fleet Corporation and to the complainant than they were to the defendant. Except as so specifically admitted, it denies each and every averment of said Article Twenty-second.

Twenty-third: Answering Article Twenty-third of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Twenty-fourth: Answering Article Twenty-fourth of the bill of complaint, it admits that Bethlehem Ship was obligated to perform each and all of its contracts fairly and honestly in accordance with their terms. Except as so specifically admitted, it denies each and every averment thereof.

Twenty-fifth: Answering Article Twenty-fifth of the bill of complaint, it denies that it has any

knowledge with respect to the averments thereof that during the period in which the contracts thereafter in the bill of complaint referred to were entered into, the Government of the United States, acting under its constitutional powers, had in other instances fixed and limited the profit to be made by other shipbuilders constructing similar ships under similar circumstances, and in the vicinity of the various shipbuilding plants so operated by the defendants, at a sum not to exceed ten per cent. (10%) of the actual cost thereof, and in many instances at a sum much less than ten per cent. (10%) of the actual cost thereof. Except as aforesaid, it denies each and every averment of said Article Twenty-fifth.

Twenty-sixth: Answering Article Twenty-sixth of the bill of complaint, it admits that on or about April 16, 1918, Charles M. Schwab, at the request of the President of the United States, entered upon the office of Director General of the Fleet Corporation and continued in that office until December 12, 1918.

It admits that during the time that Charles M. Schwab was Director General of the Fleet Corporation he was a stockholder and Chairman of the Board of Directors of the defendant Bethlehem Steel Corporation, and that during such period Joseph W. Powell was a Vice-President of Bethlehem Ship and, as such, in charge generally of the contracts referred to in the bill of complaint and of the performance thereof. It admits that during such period Charles M. Schwab took no official action with regard to such contracts, and refrained from questioning the provisions of some of such

contracts with respect to the fixed fee for profit and the sharing of the difference between the estimated cost and the actual cost of the vessels constructed thereunder. It denies that it has any knowledge with respect to the averments of said Article Twenty-sixth as applied to the other defendants herein.

Except as so specifically admitted and except the averments with respect to which it has denied that it has any knowledge, it denies each and every averment of said Article Twenty-sixth.

Twenty-seventh: Answering Article Twenty-seventh of the bill of complaint, it admits that during the time that Charles M. Schwab was Director General of the Fleet Corporation the defendant Bethlehem Steel Corporation owned the capital stock of the defendant Bethlehem Steel Company, Bethlehem Ship, Union and the defendant, and by virtue thereof had stock control of such corporations. Except as so specifically admitted, it denies each and every averment of said Article Twenty-seventh.

Twenty-eighth: Answering Article Twenty-eighth of the bill of complaint, it denies each and every averment thereof.

Twenty-ninth: Answering Article Twenty-ninth of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Thirtieth: Answering Article Thirtieth of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Thirty-first: Answering Article Thirty-first of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Thirty-second: Answering Article Thirty-second of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Thirty-third: Answering Article Thirty-third of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Thirty-fourth: Answering Article Thirty-fourth of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Thirty-fifth: Answering Article Thirty-fifth of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Thirty-sixth: Answering Article Thirty-sixth of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Thirty-seventh: Answering Article Thirty-seventh of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Thirty-eighth: Answering Article Thirty-eighth of the bill of complaint, it denies that it has any

knowledge with respect to each and every averment thereof.

Thirty-ninth: Answering Article Thirty-ninth of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Fortieth: Answering Article Fortieth of the bill of complaint, it admits that after the issuance and service upon it of the requisition order of August 3, 1917, and on or about August 22, 1917, the Fleet Corporation ordered it to complete the vessels covered by such requisition order substantially in accordance with the plans and specifications provided by the original contracts for such vessels between it and the former owners thereof and agreed to pay for the work of such completion the amounts specified in such original contracts then unpaid, and it admits that such order dated August 22, 1917, was accepted by it on such condition and that the completion of such vessels was subsequently taken over by Bethlehem Ship which completed such vessels and delivered the same to or on the order of the Fleet Corporation; but it refers to the averments of Articles Fifty-fifth and Fifty-sixth hereof set forth for a true and correct statement of the nature and effect of such transactions. Except as so specifically admitted, it denies each and every averment of said Article Fortieth.

Forty-first: Answering Article Forty-first of the bill of complaint, it admits that Exhibit D to the bill of complaint correctly lists the vessels under construction at its plant and included in such requisition order of August 3, 1917, and, to the extent

that such figures are the same as those shown on Exhibit 1 hereto, the total amounts paid by the former owners and the Fleet Corporation to it and Bethlehem Ship on account of the construction of such vessels, but it refers to Exhibit 1 hereto (being Exhibit 3 to the Answer of Bethlehem Ship on file in this action) and to the averments of Articles Fifty-fourth to Sixty-seventh, inclusive, hereof, for a correct statement of the transactions and accounts between the Fleet Corporation and it and Bethlehem Ship on account of the construction of such vessels. Except as so specifically admitted, it denies that it has any knowledge with respect to each and every averment of said Article Forty-first.

Forty-second: Answering Article Forty-second of the bill of complaint, it admits that its original contracts under which the vessels listed in Exhibit 1 hereto opposite its name were being constructed for the former owners thereof (except two) were on a lump sum basis and not on the basis of cost plus a percentage for profit and that it was not entitled under such contracts to additional compensation for overtime work on such construction. It denies that it has any knowledge with respect to the averments of said Article Forty-second as applied to the other defendants herein. Except as so specifically admitted and except the averments with respect to which it has denied that it has any knowledge it denies each and every averment of said Article Forty-second.

Forty-third: Answering Article Forty-third of the bill of complaint, it admits that during the war the Government, in furtherance of the war ship-

building program, directed that, with respect to all shipbuilding work carried on for the Government and for the Fleet Corporation, eight hours per day should constitute the normal time of employment for labor, and that for all labor employed over eight hours in any day a bonus at times of fifty per cent. (50%) and at other times of one hundred per cent. (100%) should be paid, and that all work on Saturday afternoons, Sundays and holidays should be deemed to be overtime and that with respect thereto a bonus of one hundred per cent. (100%) per hour should be paid, and it admits that the basis of compensation for such overtime is commonly known as "time and a half" and "double time" according as the bonus is fifty per cent. (50%) or one hundred per cent. (100%). Except as so specifically admitted, it denies each and every averment of said Article Forty-third.

Forty-fourth: Answering Article Forty-fourth of the bill of complaint, it admits that after the date of the requisition of the vessels under construction by it and before the completion of such vessels was undertaken by Bethlehem Ship, a contract was entered into between it and the Fleet Corporation for the completion of such vessels as hereinafter in Article Fifty-fifth hereof set forth. It admits that subsequently and on or about November 1, 1917, it entered into an agreement with Bethlehem Ship, as hereinafter in Article Fifty-sixth hereof set forth. It denies that it has any knowledge with respect to each and every averment of said Article Forty-fourth as applied to the other defendants herein. Except as so specifically admitted and except the averments with respect to which it has

denied that it has any knowledge, it denies each and every averment of said Article Forty-fourth.

Forty-fifth: Answering Article Forty-fifth of the bill of complaint, it admits that during the period of construction of the vessels covered by such requisition order it and Bethlehem Ship employed overtime in the construction thereof. It denies that it has any knowledge with respect to each and every averment of said Article Forty-fifth as applied to the other defendants herein. Except as so specifically admitted and except the averments with respect to which it has denied that it has any knowledge, it denies each and every averment of said Article Forty-fifth.

Forty-sixth: Answering Article Forty-sixth of the bill of complaint, it admits that the "overtime co-efficient" which was adopted and applied to overtime at its plant and which the Fleet Corporation agreed to pay as hereinafter in Article Fifty-eighth hereof set forth, was arrived at as follows (the computations for convenience being reduced to units of a dollar):

"TIME AND A HALF."

Shipbuilder pays workmen for overtime of two hours:

(a) At regular rate of $1 per hour (The shipbuilder is not reimbursed payments under (a) except to the extent that they are covered by lump sum prices.)	$2.00
(b) As overtime bonus for two hours at 50% of regular rate (reimbursed by	

Fleet Corporation)	1.00
Total paid by shipbuilder to workmen for overtime and bonus	$3.00

Shipbuilder receives from the Fleet Corporation under co-efficient of 2.625, the following:

(1) Overtime bonus, as above	$1.00
(2) Loss in workmen's efficiency ⅜ of normal rate of $1 an hour for two hours	.75
Total of factors (1) and (2)	$1.75
(3) For increase in overhead cost and decrease in overhead efficiency 50% of item No. 1 above plus 50% of item No. 2 above	.875
Total charged by shipbuilder to the Fleet Corporation for each two hours overtime	$2.625

It denies that it has any knowledge with respect to the averments of said Article Forty-sixth as applied to the other defendants herein. Except as so specifically admitted and except the averments with respect to which it has denied that it has any knowledge, it denies each and every averment of said Article Forty-sixth.

Forty-seventh: Answering Article Forty-seventh of the bill of complaint, it denies each and every averment thereof.

Forty-eighth: Answering Article Forty-eighth of the bill of complaint, it admits that from time to time Bethlehem Ship included in its statements to the Fleet Corporation on account of the "overtime co-efficient" the amounts specified in column K of Exhibit 1 hereto. Except as so specifically admitted, it denies each and every averment of said Article Forty-eighth.

Forty-ninth: Answering Article Forty-ninth of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Fiftieth: Answering Article Fiftieth of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Fifty-first: Answering Article Fifty-first of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Fifty-second: Answering Article Fifty-second of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof as applied to the other defendants herein, and as applied to it; it denies each and every averment thereof.

Fifty-third: Answering Article Fifty-third, being advised that it is not required to admit or deny the conclusions of law in said Article pleaded, it neither admits nor denies the averments of said Article.

As a general defense to each and every claim of the complainant against it, and by way of explanation of the transactions in which it is in any way involved, as set forth in the Bill of Complaint, the defendant, hereby reiterating each and every denial and averment hereinbefore contained, further says:

Fifty-fourth: On or about the dates, respectively, listed in column C of Exhibit 1 hereto, the defendant and the former owners, respectively, listed in column B thereof, made and entered into written contracts covering the construction of the vessels included in such requisition order in Article Fifteenth hereof mentioned and listed in column D of such Exhibit 1 opposite its name in column A thereof. Such Exhibit 1 is the same as Exhibit 3 annexed to the Answer of Bethlehem Ship on file in this action. Copies of such contracts (hereinafter called the original contracts), without the plans and specifications therein referred to, marked Exhibits 29 to 37, inclusive, respectively, are annexed to such Answer of Bethlehem Ship and are made a part hereof as if herein fully set forth, and the defendant prays leave to refer on the trial of this action to such plans and specifications.

Fifty-fifth: Upon the requisition of such vessels as in Article Fifteenth hereof set forth, and on or about September 10, 1917, the defendant and the Fleet Corporation, acting as principal and not as the agent of the complainant, entered into a contract in writing whereby the defendant agreed to complete such vessels for the Fleet Corporation in conformity with the requirements of the original contracts and the plans and specifications therein

referred to in so far as the original contracts describe such vessels, the materials, equipment, outfit, workmanship, insurance, classification and survey thereof, including the meeting of the requirements of the original contracts and all tests as to efficiency and capacity of the vessels on completion, and in so far as the original contracts contain provisions for the benefit and protection of the former owners, but not otherwise; and on final acceptance of each such vessel, to give a bill of sale to the United States in satisfactory form conveying all its right, title and interest in such vessel, together with its certificate that such vessel was then free from liens, claims or equities with the exception of those of the former owner, and then only those set forth in the original contract therefor; and whereby the Fleet Corporation agreed that it would pay to the defendant for the work of such completion, amounts equal to the payments set forth in the original contracts and not then paid. The Fleet Corporation also agreed that upon the completion of such vessels a complete audit of the items which should go to make up the price of such vessels would be made by the Fleet Corporation and that thereupon the balance determined to be due on such vessels should become immediately due and payable. Each and every action taken by the Fleet Corporation under such contract in this Article mentioned was taken by it as principal and as the real party in interest thereunder and not as the agent of the complainant, and the defendant at all times dealt with such corporation solely on such basis.

Fifty-sixth: Thereafter, and on or about November 1, 1917, Bethlehem Ship leased the defendant's

plant and, at the same time, made and entered into an agreement with the defendant whereby Bethlehem Ship became obligated as the defendant's agent to perform all of the defendant's contracts listed in such Exhibit 1, and became entitled to the benefits theretofore accrued and thereafter to accrue under such contracts; and Bethlehem Ship, with the approval of the Fleet Corporation, took over and proceeded with the completion of the vessels covered by such contracts, in accordance with the terms and provisions of the contract between the defendant and the Fleet Corporation in Article Fifty-fifth hereof set forth.

Fifty-seventh: Thereafter, and on or about the 28th day of January, 1919, in consideration of an agreement on the part of the Fleet Corporation to pay to Bethlehem Ship for the work of constructing Hulls numbered 264, 265 and 267, the cost thereof plus $10 per ton deadweight capacity of said vessels, Bethlehem Ship agreed to reduce the percentage of cost which the Fleet Corporation should pay to it for profit for constructing Hulls numbered 297 and 298, from twenty-five per cent. (25%) to fifteen per cent. (15%).

Fifty-eighth: Thereafter, from time to time, the Fleet Corporation directed Bethlehem Ship to employ overtime in the construction of Hulls numbered 268, 269, 272 and 273, and on or about the 11th day of January, 1918, agreed that it would pay to Bethlehem Ship in respect of such overtime, in addition to all other payments theretofore agreed to be paid on account of such vessels, amounts equal to 2.625 (called the "overtime co-efficient") times the bonus

(i. e. the excess of wages at overtime rates as established from time to time under governmental direction over wages at regular rates so established) paid by Bethlehem Ship to its employees in respect of such overtime. Bethlehem Ship in accordance with such agreement and at the direction of the Fleet Corporation, from time to time, employed overtime in the construction of such vessels and in that connection paid to its employees bonuses the aggregates of which times the applicable overtime co-efficient amounted to the sums set forth in column K of such Exhibit 1 hereto.

Fifty-ninth: From time to time during the period of construction of Hulls numbered 268, 269, 272 and 273, the former owners, and later, the Fleet Corporation, under and pursuant to the terms of the contracts therefor, directed that certain additions to and omissions from the plans and specifications therefor be made and such additions to and omissions from such plans and specifications were made in accordance with the orders and directions of the former owners and, later, the Fleet Corporation as aforesaid. The net cost of such additions and omissions, which by the provisions of such contracts it was agreed should be added to the price of each such vessel was as set forth in column J of such Exhibit 1.

Sixtieth: In the case of Hulls numbered 272 and 273, the original contracts therefor provided that the purchaser would pay to the shipbuilder for each ton that the deadweight carrying capacity of each such vessel should exceed the guaranteed deadweight carrying capacity thereof, respectively, the amounts

specified in such contracts. Upon the completion of such vessels they, respectively, had the deadweight carrying capacity specified in column F of such Exhibit 1 and there became due from the Fleet Corporation on account thereof the amounts specified in Column N of such Exhibit 1.

Sixty-first: In the months of November and December, 1917, the Fleet Corporation directed Bethlehem Ship to put into effect in its East Coast plants, including the Fore River plant, on all requisitioned vessels, the rates of wages then prevailing at the Navy Yard nearest thereto. On April 6, 1918, and again on October 24, 1918, the Shipbuilding Labor Adjustment Board increased the rates of wages payable to labor engaged in ship construction at the Fore River plant and the Fleet Corporation ordered and directed Bethlehem Ship to put into effect such increased rates and agreed to reimburse Bethlehem Ship for the increased cost of labor incurred on account thereof. The increased cost of labor actually incurred by Bethlehem Ship in the construction of Hulls numbered 268, 269, 272 and 273, pursuant to the aforementioned orders and directions of the Fleet Corporation and for which the Fleet Corporation agreed to reimburse Bethlehem Ship as aforesaid was as set forth in column M of such Exhibit 1.

Sixty-second: Bethlehem Ship completed such vessels so included in such requisition order and listed in column D of such Exhibit 1 in accordance with the plans and specifications therefor and delivered such vessels complete in accordance with the orders of the Fleet Corporation afloat at the Fore

River plant on or about the dates listed in such Exhibit 1, and the Fleet Corporation thereupon took possession of and accepted such vessels. The defendant and Bethlehem Ship duly performed all the terms and conditions of all the contracts therefor on their part to be performed, and the Fleet Corporation took possession of and accepted such vessels as constructed in accordance with such plans and specifications and in accordance with the terms and conditions of such contracts.

Sixty-third: In addition to the materials which entered into the construction of Hulls numbered 297 and 298 the cost of which was paid directly by the defendant and Bethlehem Ship, there were other materials which entered into the construction of such vessels which were obtained for the defendant and Bethlehem Ship by Luckenbach, the former owner, from other contractors, the cost of which aggregating Two hundred thirty-three thousand six hundred dollars ($233,600) was paid by said Luckenbach direct to such contractors, so that the total actual cost of constructing Hulls numbered 297 and 298 determined in accordance with the provisions of the contracts therefor, was Five million two hundred twenty-five thousand three hundred thirty-nine dollars and thirty-one cents ($5,225,339.31).

Sixty-fourth: Upon the completion and delivery of Hulls numbered 297 and 298, Bethlehem Ship purchased from the Fleet Corporation certain surplus materials left over from the materials used in constructing such vessels for the sum of Thirty-two thousand one hundred ninety-six dollars and forty-two cents ($32,196.42), and Bethlehem Ship agreed

that, for the purpose of determining the profit payable in respect of the construction of such vessels, there should be deducted from the total cost of constructing the same such sums of Thirty-two thousand one hundred ninety-six dollars and forty-two cents ($32,196.42), thus reducing such total actual cost for such purpose to the sum of Five million one hundred ninety-three thousand one hundred forty-two dollars and eighty-nine cents ($5,193,142.89).

Sixty-fifth: After the completion and delivery of the vessels and the acceptance thereof by the Fleet Corporation as aforesaid, a complete audit of the items of cost incurred in the construction of such vessels was made by the Fleet Corporation and completed on or about the first day of September, 1922. On such audit the Fleet Corporation found the amounts which had become payable by it to the defendant and/or Bethlehem Ship on account of the construction of such vessels to be as set forth in columns I, J, K, L, M, N, O, P and Q of such Exhibit 1.

Sixty-sixth: From time to time during and after the period of construction thereof, the former owners, and, later, the Fleet Corporation, paid to the defendant and, later, to Bethlehem Ship, amounts on account of the construction of such vessels, the aggregates of which are as set forth in column R of such Exhibit 1.

Sixty-seventh: Although duly requested, the Fleet Corporation has failed and refused to pay on account of the construction of such vessels, the amounts set forth in column S of such Exhibit 1, and such amounts together with interest thereon

from September 1, 1922, are now due and owing from the Fleet Corporation to Bethlehem Ship.

As a separate and special defense to each and every claim of the complainant based upon the averments of Articles Twenty-sixth, Twenty-seventh, Twenty-eighth, Twenty-ninth and the last sentence of Article Forty-ninth of the Bill of Complaint, the defendant, hereby reiterating each and every denial and averment hereinbefore contained, but in addition thereto, says:

Sixty-eighth: At the instance of the United States Shipping Board, and especially of Edward N. Hurley, its Chairman, and Bainbridge Colby, one of its members, Charles M. Schwab was invited by President Wilson to become Director General of the Fleet Corporation at a time of an acute crisis in its affairs and for the special purpose of speeding up its ship construction program. Charles M. Schwab objected to accepting the appointment, giving as one reason that he could be of more service as the head of the Bethlehem enterprises, and as a second reason that he could not entirely divest himself of his relations with Bethlehem. He was assured, however, by President Wilson and Messrs. Hurley and Colby that he need have no fear on account of his relations with Bethlehem, and he finally yielded to their urgings upon the express understanding and agreement that while Director General of the Fleet Corporation he was not to participate in any way in transactions between the Fleet Corporation and the defendants herein.

Sixty-ninth: In pursuance of such understanding and agreement and promptly after taking office, he wrote to the President and Trustees of the Fleet Corporation a letter, of which the following is a copy:

"April 30, 1918.

"To the President and Trustees of the
United States Shipping Board Emergency
Fleet Corporation:

Dear Sirs:

The United States Shipping Board Emergency Fleet Corporation, of which I have been appointed Director General, has, or may in the future have, contracts or other business relations not only with the Bethlehem Steel Corporation, of which I am an officer, director and stockholder, but also with certain of its subsidiary companies in which I am directly or indirectly interested.

I am of the opinion that it would be inadvisable for me to participate, as such Director General, in the transaction of any business between the Emergency Fleet Corporation and any of the said companies, with special reference to the making of contracts with, or the giving of orders to, such companies, and, therefore, request that all business between the United States Shipping Board Emergency Fleet Corporation and the companies named below may be handled entirely by such other officers or agents of the Emergency Fleet Corporation as you may designate.

Bethlehem Steel Corporation,
Bethlehem Steel Company,
Bethlehem Steel Bridge Corporation,
Bethlehem Loading Company,
Fore River Shipbuilding Corporation,
The Detrick & Harvey Machine Company,
Bethlehem Steel Products Company,
Ore Steamship Corporation,
Saucon Land & Improvement Company,
Bethlehem Securities Company,
Bethlehem Shipbuilding Corporation, Ltd.,
Union Iron Works Company,
Union Iron Works Dry Dock Company.

Yours very truly,

CE-MS (Sgd) C. M. Schwab."

Seventieth: Immediately thereafter, on May 2, 1918, in accordance with such understanding and agreement, the Board of Trustees of the Fleet Corporation formally incorporated such letter into their minutes, and at the same time by resolution provided that all contracts before execution should be submitted to such Board for their approval. A copy of such resolution is as follows:

> "Resolved that all contracts of the United States Shipping Board Emergency Fleet Corporation, after they are approved by the Vice-President and Secretary, whether for the Operating or Construction Divisions, be submitted to the Board of Trustees for their approval and then approved by the officers of the Corporation authorized by the Board of Trustees and formally executed."

Charles M. Schwab was never at any time a member of the Board of Trustees of the Fleet Corporation.

Seventy-first: Charles M. Schwab faithfully carried out such understanding and agreement and did not at any time take any part in the relations between the Fleet Corporation and the defendants herein.

Insufficiency of Bill of Complaint

Seventy-second: Further answering the bill of complaint, and in lieu of motions to dismiss the bill of complaint or parts thereof before answer, the defendant says that the complainant is not entitled to recover of the defendant in this action because it has not stated facts sufficient to constitute a valid cause of action in equity against the defendant, and that the complainant is not the proper party to bring this action.

Claim for Credit

Seventy-third: Not waiving but insisting on the defenses hereinbefore pleaded, but in addition thereto, the defendant repeats and reavers each and every averment of Articles Fifty-fourth to Sixty-seventh, inclusive, hereof with the same force and effect as if herein again alleged in full and says that Bethlehem Ship has duly presented to the Fleet Corporation and to the United States Shipping Board all of the defendant's and/or Bethlehem Ship's claims on account of the transactions in said Articles set forth and the Fleet Corporation and

said Shipping Board have disallowed such claims, and that if the complainant shall be found entitled to bring this action in its own name and to recover therein, any amount or amounts to which the complainant may become entitled on account of any of the transactions herein set forth, should be reduced by the amounts now due and owing from the Fleet Corporation hereinbefore set forth.

Wherefore, the defendant prays:

1. That the bill of complaint be, in all respects, dismissed, with costs of this action.

2. That the defendant have such other and further relief as may be just and equitable.

Charles Sinkler,
Solicitor for the Defendant Fore River Shipbuilding Corporation.

Cravath, Henderson and De Gersdorff,
Of Counsel.

July 25, 1925.

THE ANSWER AND COUNTERCLAIM OF THE DEFENDANT UNION IRON WORKS COMPANY TO THE BILL OF COMPLAINT

(Filed July 25, 1925)

The defendant Union Iron Works Company (hereinafter called the defendant), for its separate answer and counterclaim to the bill of complaint in the above entitled action, says:

First: Answering Article First of the bill of complaint, it admits the facts therein averred. The defendant Bethlehem Shipbuilding Corporation, Ltd., is hereinafter called Bethlehem Ship; the defendant, Fore River Shipbuilding Corporation, Fore River; Harlan & Hollingsworth Corporation, Harlan; and Samuel L. Moore & Sons Corporation, Moore.

Second: Answering Article Second of the bill of complaint, it admits that many of the contracts between Bethlehem Ship and United States Shipping Board Emergency Fleet Corporation (hereinafter called the Fleet Corporation) referred to in the bill of complaint were made, executed and delivered within the Eastern District of Pennsylvania, and that moneys of the Fleet Corporation paid in connection therewith were paid by the Fleet Corporation and received by Bethlehem Ship within the Eastern District of Pennsylvania. It denies that it has any knowledge with respect to the averments

of said Article Second that the defendant Bethlehem Steel Company is jointly liable with Bethlehem Ship with respect to certain of the causes of action averred in the bill of complaint, and particularly with respect to part of the causes of action averred in Articles Forty-second to Fifty-second, inclusive, of such bill. Except as so specifically admitted and except the averments with respect to which it has denied that it has any knowledge, it denies each and every averment of said Article Second.

Third: Answering Article Third of the bill of complaint, it admits the averments thereof.

Fourth: Answering Article Fourth of the bill of complaint, it admits the averments thereof.

Fifth: Answering Article Fifth of the bill of complaint, it admits that on April 16, 1917, pursuant to Section 11 of the Shipping Act of 1916, the United States Shipping Board caused the Fleet Corporation to be organized under the Act of Congress of March 3, 1901, entitled "An Act to Establish a Code of Law for the District of Columbia", and the provisions thereof relating to corporations to be organized in said District, and that such corporation has since existed and is now existing with such corporate powers as are specified in its certificate of incorporation, and in and by said Code of Law of the District of Columbia as limited and qualified by Section 11 of the Shipping Act of 1916, and Acts amendatory thereof. Except as so specifically admitted, it denies that it has any knowledge with respect to each and every averment of said Article Fifth.

Sixth: Answering Article Sixth of the bill of complaint, it admits the averments thereof.

Seventh: Answering Article Seventh of the bill of complaint, it admits the averments thereof.

Eighth: Answering Article Eighth of the bill of complaint, it admits the averments thereof.

Ninth: Answering Article Ninth of the bill of complaint, it admits the averments thereof.

Tenth: Answering Article Tenth of the bill of complaint, it admits that the Fleet Corporation, under its certificate of incorporation and under the Shipping Act of 1916, had no power or authority to bind the United States as its representative or agent or otherwise with respect thereto. Except as so specifically admitted, it denies each and every averment of said Article Tenth.

Eleventh: Answering Article Eleventh of the bill of complaint, it denies each and every averment thereof. It avers that each and all of the contracts referred to in the bill of complaint which were entered into, or signed by, or in the name of, the Fleet Corporation, were made and entered into by such corporation as principal and as the real party in interest thereunder and not as the agent of the complainant. It avers further that each and every action taken by the Fleet Corporation under each and all of such contracts was taken by such corporation as principal and as the real party in interest thereunder and not as the agent of the complainant, and that Bethlehem Ship, Fore River, the defendant Bethlehem Steel Company and the de-

fendant dealt with such corporation thereunder solely on such basis.

Twelfth: Answering Article Twelfth of the bill of complaint, it admits that the transactions between Bethlehem Ship and the Fleet Corporation referred to in the bill of complaint involved amounts greatly in excess of $50,000,000, and that the Shipping Act of 1916 was in full force and effect during the period in which the contracts between Bethlehem Ship and the Fleet Corporation and the supplements thereto referred to in the bill of complaint were made. Except as so specifically admitted, it denies each and every averment of said Article Twelfth.

Thirteenth: Answering Article Thirteenth of the bill of complaint, it admits that the defendant Bethlehem Steel Corporation was incorporated under the laws of the State of New Jersey on or about December 10, 1904, in connection with the reorganization of United States Shipbuilding Company, and that on or about January 20, 1905, such defendant acquired the entire capital stocks (except qualifying shares held by the directors thereof) of the defendant Bethlehem Steel Company, Harlan, Moore and the defendant and of certain other corporations. Except as so specifically admitted, it denies each and every averment of said Article Thirteenth.

Fourteenth: Answering Article Fourteenth of the bill of complaint, it admits that on or about January 17, 1905, it acquired all the properties of Union Iron Works and in 1909 acquired the capital stock of Union Iron Works Dry Dock Company, a California corporation, and that prior to the transactions between Bethlehem Ship and the Fleet Corporation

thereafter referred to in the bill of complaint, and until the operation thereof was taken over by Bethlehem Ship, it operated a shipbuilding plant known as the Union plant at or near San Francisco, California. It denies that it has any knowledge with respect to the averments of said Article Fourteenth as applied to the other defendants herein.

Except as so specifically admitted and except the averments with respect to which it has denied that it has any knowledge, the defendant denies each and every averment of said Article Fourteenth.

Fifteenth: Answering Article Fifteenth of the bill of complaint, it admits that on or about August 3, 1917, the Fleet Corporation, purporting to act under the Act of June 15, 1917, and the Executive Order of July 11, 1917, served upon it an order purporting to requisition on behalf of the United States all power driven, cargo-carrying and passenger vessels, above 2500 tons deadweight capacity, under construction in its yard, together with certain materials, machinery, equipment, outfit and commitments therefor necessary for the completion of such vessels, and it admits that thereafter the Fleet Corporation entered into a contract with it covering the completion of such vessels as hereinafter in Article Fifty-fifth hereof set forth. It denies that it has any knowledge with respect to the averments of said Article Fifteenth that on or about August 3, 1917, the complainant acting through the Fleet Corporation (under such Act and Executive Order) requisitioned all vessels of over 2500 tons deadweight capacity then under construction in all shipyards throughout the United States. Except as so speci-

fically admitted and except the averments with respect to which it has denied that it has any knowledge, it denies each and every averment of said Article Fifteenth.

Sixteenth: Answering Article Sixteenth of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Seventeenth: Answering Article Seventeenth of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Eighteenth: Answering Article Eighteenth of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Nineteenth: Answering Article Nineteenth of the bill of complaint, it admits that on or about November 1, 1917, it leased its plant to Bethlehem Ship and that from the effective date of such lease Bethlehem Ship has operated such plant. It admits that on or about the same date Bethlehem Ship entered into an agreement with it whereby Bethlehem Ship undertook to perform all of its outstanding contracts with the Fleet Corporation for the construction of vessels covered by such requisition order of August 3, 1917, and it admits that, with the consent of the Fleet Corporation, Bethlehem Ship thereafter entered into and continued in the performance of such contracts and of contracts made in substitution or modification thereof during the period referred to in the bill of complaint; all as in Article Fifty-sixth hereof set forth. It denies that

it has any knowledge with respect to each and every averment of said Article Nineteenth as applied to the other defendants herein. Except as so specifically admitted and except the averments with respect to which it has denied that it has any knowledge, it denies each and every averment of said Article Nineteenth.

Twentieth: Answering Article Twentieth of the bill of complaint, it admits that at the time of the making of the contracts between Bethlehem Ship and the Fleet Corporation thereafter referred to in the bill of complaint, it knew what the cost of building the various types of steel vessels which had prior thereto been built by it had been, and it admits that at such time Bethlehem Ship maintained at its plant an organization engaged in the building of vessels. It admits that at the same time the defendant Bethlehem Steel Corporation owned its capital stock and that by reason thereof became entitled to dividends as and when declared from its net earnings. It denies that it has any knowledge with respect to each and every averment of said Article Twentieth as applied to the other defendants herein. Except as so specifically admitted and except the averments with respect to which it has denied that it has any knowledge, it denies each and every averment of said Article Twentieth.

Twenty-first: Answering Article Twenty-first of the bill of complaint, it admits that immediately after the incorporation thereof, Bethlehem Ship took over a large part of the organization and personnel of Fore River, Moore, Harlan and the defendant and of the Sparrows Point plant acquired

as aforesaid. It admits that upon the organization of Bethlehem Ship, and prior to the making of the contracts between the Fleet Corporation and Bethlehem Ship dated December 31, 1917, thereafter referred to in the bill of complaint, the general basis of the organization of Bethlehem Ship was, and continued thereafter to be, substantially as follows: The shipbuilding plant at Wilmington, Delaware, which formerly belonged to Harlan, was operated and known as the Harlan plant. The shipbuilding plant at Elizabethport, New Jersey, which formerly belonged to Moore, was operated and known as the Moore plant. The shipbuilding plant at Fore River, Massachusetts, was operated and known as the Fore River plant. The shipbuilding plant at Sparrows Point, Maryland, was operated and known as the Sparrows Point plant. And the plants on the Pacific Coast formerly operated by the defendant and by Union Iron Works Dry Dock Company, were operated and known as the Union plant. The defendant denies that it has any knowledge with respect to the averments of said Article Twenty-first that neither the complainant, nor the Fleet Corporation, nor the United States Shipping Board, nor any members of the organization of either of said bodies (except, as thereafter in the bill of complaint stated, Charles M. Schwab), were entirely familiar with, and had special expert knowledge of, the actual and probable cost of building such vessels and of estimating the profits to be derived therefrom.

The defendant admits that in November and December, 1917, and at various times thereafter the Government undertook to fix the rates of wages payable to labor engaged in shipbuilding work for

the Government and for the Fleet Corporation, and that such action of the Government was known to the defendant.

Except as so specifically admitted and except the averments with respect to which it has denied that it has any knowledge, it denies each and every averment of said Article Twenty-first.

Twenty-second: Answering Article Twenty-second of the bill of complaint, it admits that because of the necessity for constructing vessels to meet the emergencies and requirements of the war, particularly the enormous loss of vessels caused by the unrestricted submarine warfare undertaken by the German Empire, an extraordinary emergency of the war existed and rendered it necessary for the Government to control generally the entire shipbuilding, steel, coal, transportation and other industries of the United States and to obtain as many vessels as it was possible for each shipbuilder of the country to construct, and to have the same constructed in the least possible period of time, and it admits that these conditions and this emergency were known to the public in general and to the defendant. It avers that such extraordinary emergency and the conditions and circumstances resulting therefrom were better known to the Fleet Corporation and to the complainant than they were to the defendant. Except as so specifically admitted, it denies each and every averment of said Article Twenty-second.

Twenty-third: Answering Article Twenty-third of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Twenty-fourth: Answering Article Twenty-fourth of the bill of complaint, it admits that Bethlehem Ship was obligated to perform each and all of its contracts fairly and honestly in accordance with their terms. Except as so specifically admitted, it denies each and every averment thereof.

Twenty-fifth: Answering Article Twenty-fifth of the bill of complaint, it denies that it has any knowledge with respect to the averments thereof that during the period in which the contracts thereafter in the bill of complaint referred to were entered into, the Government of the United States, acting under its constitutional powers, had in other instances fixed and limited the profit to be made by other shipbuilders constructing similar ships under similar circumstances, and in the vicinity of the various shipbuilding plants so operated by the defendants, at a sum not to exceed ten per cent. (10%) of the actual cost thereof, and in many instances at a sum much less than ten per cent. (10%) of the actual cost thereof. Except as aforesaid, it denies each and every averment of said Article Twenty-fifth.

Twenty-sixth: Answering Article Twenty-sixth of the bill of complaint, it admits that on or about April 16, 1918, Charles M. Schwab, at the request of the President of the United States, entered upon the office of Director General of the Fleet Corporation and continued in that office until December 12, 1918.

It admits that during the time that Charles M. Schwab was Director General of the Fleet Corporation he was a stockholder and Chairman of the Board of Directors of the defendant Bethlehem

Steel Corporation, and that during such period Joseph W. Powell was a Vice-President of Bethlehem Ship and, as such, in charge generally of the contracts referred to in the bill of complaint and of the performance thereof. It admits that during such period Charles M. Schwab took no official action with regard to such contracts, and refrained from questioning the provisions of some of such contracts with respect to the fixed fee for profit and the sharing of the difference between the estimated cost and the actual cost of the vessels constructed thereunder. It denies that it has any knowledge with respect to the averments of said Article Twenty-sixth as applied to the other defenda .. herein.

Except as so specifically admitted and except the averments with respect to which it has denied that it has any knowledge, it denies each and every averment of said Article Twenty-sixth.

Twenty-seventh: Answering Article Twenty-seventh of the bill of complaint, it admits that during the time that Charles M. Schwab was Director General of the Fleet Corporation the defendant Bethlehem Steel Corporation owned the capital stock of Bethlehem Steel Company, Bethlehem Ship, Fore River and the defendant, and by virtue thereof had stock control of such corporations. Except as so specifically admitted, it denies each and every averment of said Article Twenty-seventh.

Twenty-eighth: Answering Article Twenty-eighth of the bill of complaint, it denies each and every averment thereof.

Twenty-ninth: Answering Article Twenty-ninth of the bill of complaint, it denies that it has any

knowledge with respect to each and every averment ther of.

Thirtieth: Answering Article Thirtieth of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Thirty-first: Answering Article Thirty-first of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Thirty-second: Answering Article Thirty-second of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Thirty-third: Answering Article Thirty-third of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Thirty-fourth: Answering Article Thirty-fourth of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Thirty-fifth: Answering Article Thirty-fifth of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Thirty-sixth: Answering Article Thirty-sixth of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Thirty-seventh: Answering Article Thirty-seventh of the bill of complaint, it denies that it has any

knowledge with respect to each and every averment thereof.

Thirty-eighth: Answering Article Thirty-eighth of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Thirty-ninth: Answering Article Thirty-ninth of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Fortieth: Answering Article Fortieth of the bill of complaint, it admits that after the issuance and service upon it of the requisition order of August 3, 1917, and on or about August 22, 1917, the Fleet Corporation ordered it to complete the vessels covered by such requisition order substantially in accordance with the plans and specifications provided by the original contracts for such vessels between it and the former owners thereof and agreed to pay for the work of such completion the amounts specified in such original contracts then unpaid, and it admits that such order dated August 22, 1917, was accepted by it on such condition and that the completion of such vessels was subsequently taken over by Bethlehem Ship which completed such vessels and delivered the same to or on the order of the Fleet Corporation; but it refers to the averments of Articles Fifty-fifth and Fifty-sixth hereof set forth for a true and correct statement of the nature and effect of such transactions. Except as so specifically admitted, it denies each and every averment of said Article Fortieth.

Forty-first: Answering Article Forty-first of the bill of complaint, it admits that Exhibit D to the bill of complaint correctly lists the vessels under construction at its plant, and included in such requisition order of August 3, 1917, and, to the extent that such figures are the same as those shown on Exhibit 1 hereto, the total amounts paid by the former owners and the Fleet Corporation to it and Bethlehem Ship on account of the construction of such vessels, but it refers to Exhibit 1 hereto (being Exhibit 3 to the Answer of Bethlehem Ship on file in this action) and to the averments of Articles Fifty-fourth to Sixty-fourth, inclusive, hereof, for a correct statement of the transactions and accounts between the Fleet Corporation and it and Bethlehem Ship on account of the construction of such vessels. Except as so specifically admitted, it denies that it has any knowledge with respect to each and every averment of said Article Forty-first.

Forty-second: Answering Article Forty-second of the bill of complaint, it admits that its original contracts under which the vessels listed in Exhibit 1 hereto opposite its name were being constructed for the former owners thereof (except two) were on a lump sum basis and not on the basis of cost plus a percentage for profit and that it was not entitled under such contracts to additional compensation for overtime work on such construction. It denies that it has any knowledge with respect to each and every averment of said Article Forty-second as applied to the other defendants herein. Except as so specifically admitted and except the averments with respect to which it has denied that it has any

knowledge, it denies each and every averment of said Article Forty-second.

Forty-third: Answering Article Forty-third of the bill of complaint, it admits that during the war the Government, in furtherance of the war shipbuilding program, directed that, with respect to all shipbuilding work carried on for the Government and for the Fleet Corporation, eight hours per day should constitute the normal time of employment for labor, and that for all labor employed over eight hours in any day a bonus at times of fifty per cent. (50%) and at other times of one hundred per cent. (100%) should be paid, and that all work on Saturday afternoons, Sundays and holidays should be deemed to be overtime and that with respect thereto a bonus of one hundred per cent. (100%) per hour should be paid, and it admits that the basis of compensation for such overtime is commonly known as "time and a half" and "double time" according as the bonus is fifty per cent. (50%) or one hundred per cent. (100%). Except as so specifically admitted, it denies each and every averment of said Article Forty-third.

Forty-fourth: Answering Article Forty-fourth of the bill of complaint, it admits that after the date of the requisition of the vessels under construction by it and before the completion of such vessels was undertaken by Bethlehem Ship, a contract was entered into between it and the Fleet Corporation for the completion of such vessels as hereinafter in Article Fifty-fifth hereof set forth. It admits that subsequently and on or about November 1, 1917, it entered into an agreement with Bethlehem Ship, as

hereinafter in Article Fifty-sixth hereof set forth. It denies that it has any knowledge with respect to each and every averment of said Article Forty-fourth as applied to the other defendants herein. Except as so specifically admitted and except the averments with respect to which it has denied that it has any knowledge, it denies each and every averment of said Article Forty-fourth.

Forty-fifth: Answering Article Forty-fifth of the bill of complaint, it admits that during the period of construction of the vessels covered by such requisition order it and Bethlehem Ship employed overtime in the construction thereof. It denies that it has any knowledge with respect to each and every averment of said Article Forty-fifth as applied to the other defendants herein. Except as aforesaid, it denies each and every averment of said Article Forty-fifth.

Forty-sixth: Answering Article Forty-sixth of the bill of complaint, it admits that the various "overtime co-efficients" which were adopted and applied to overtime at its plant and which the Fleet Corporation agreed to pay as hereinafter in Article Fifty-eighth hereof set forth, were arrived at as follows (the computations for convenience being reduced to units of a dollar):

"TIME AND A HALF:"

Shipbuilder pays workmen for overtime of two hours:

(a) At regular rate of $1 per hour $2.00
(The shipbuilder is not reimbursed payments under (a) except to the extent

that they are covered by lump sum prices.)

(b) As overtime bonus for two hours at 50% of regular rate (reimbursed by Fleet Corporation 1.00

Total paid by shipbuilder to workmen for overtime and bonus $3.00

Shipbuilder receives from the Fleet Corporation under co-efficient of 2.625, the following:

(1) Overtime bonus, as above $1.00
(2) Loss in workmen's efficiency ⅜ of normal rate of $1 an hour for two hours ..... .75

Total of factors (1) and (2) $1.75
(3) For increase in overhead cost and decrease in overhead efficiency 50% of item No. 1 above plus 50% of item No. 2 above ..... .875

Total charged by shipbuilder to the Fleet Corporation for each two hours overtime $2.625

"DOUBLE TIME."

Shipbuilder pays workmen for overtime of one hour:

(a) At rate of $1 per hour $1.00
(b) Bonus paid double time per hour 1.00

Total paid by shipbuilder to workmen

for overtime and bonus $2.00

Shipbuilder receives under co-efficient of 1.8125, the following:

(1) Overtime bonus, as above	$1.00
(2) Loss in workmen's efficiency ⅜ per hour	.375
(3) *Increased overhead 50%. (½ hour plus ⅜ of an hour)	.4375
Total	$1.8125

"Double Time on Sundays and Holidays."

Shipbuilder pays for each one hour overtime bonus of	$1.00
No loss in efficiency.	
*Increased overhead 50% of one-half hour	.25
	$1.25

Except as so specifically admitted, it denies each and every averment of said Article Forty-sixth.

Forty-seventh: Answering Article Forty-seventh of the bill of complaint, it denies each and every averment thereof.

Forty-eighth: Answering Article Forty-eighth of the bill of complaint, it admits that from time to

*The increased cost of overhead is figured on one-half of the actual number of overtime hours worked.

time Bethlehem Ship included in its statements to the Fleet Corporation on account of the "overtime co-efficient" the amounts specified in column K of Exhibit 1 hereto. Except as so specifically admitted, it denies each and every averment of said Article Forty-eighth.

Forty-ninth: Answering Article Forty-ninth of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Fiftieth: Answering Article Fiftieth of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Fifty-first: Answering Article Fifty-first of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof.

Fifty-second: Answering Article Fifty-second of the bill of complaint, it denies that it has any knowledge with respect to each and every averment thereof as applied to the other defendants herein, and as applied to it, it denies each and every averment thereof.

Fifty-third: Answering Article Fifty-third, being advised that it is not required to admit or deny the conclusions of law in said Article pleaded, it neither admits nor denies the averments of said Article.

As a general defense to each and every claim of the complainant against it, and by way of explanation of the transactions in which it is in any way involved, as set forth in the Bill of Complaint, the defendant, hereby reiterating each and every denial and averment hereinbefore contained, further says:

Fifty-fourth: On or about the dates, respectively, listed in column C of Exhibit 1 hereto, the defendant and the former owners, respectively, listed in column B thereof, made and entered into written contracts covering the construction of the vessels included in such requisition order in Article Fifteenth hereof mentioned and listed in column D of such Exhibit 1 opposite its name in column A thereof. Such Exhibit 1 is the same as Exhibit 3 annexed to the Answer of Bethlehem Ship on file in this action. Copies of such contracts (hereinafter called the original contracts), without the plans and specifications therein referred to, marked Exhibits 57 to 72, inclusive, respectively, are annexed to such Answer of Bethlehem Ship and are made a part hereof as if herein fully set forth, and the defendant prays leave to refer on the trial of this action to such plans and specifications.

Fifty-fifth: Upon the requisition of such vessels as in Article Fifteenth hereof set forth, and on or about September 20, 1917, the defendant and the Fleet Corporation, acting as principal and not as the agent of the complainant, entered into a contract in writing whereby the defendant agreed to complete such vessels for the Fleet Corporation in conformity with the requirements of the original contracts and the plans and specifications therein referred to in so far as the original contracts de-

scribe such vessels, the materials, equipment, outfit, workmanship, insurance, classification and survey thereof, including the meeting of the requirements of the original contracts and all tests as to efficiency and capacity of the vessels on completion, and in so far as the original contracts contain provisions for the benefit and protection of the former owners, but not otherwise; and on final acceptance of each such vessel, to give a bill of sale to the United States in satisfactory form conveying all its right, title and interest in such vessel, together with its certificate that such vessel was then free from liens, claims or equities with the exception of those of the former owner, and then only those set forth in the original contract therefor; and whereby the Fleet Corporation agreed that it would pay to the defendant for the work of such completion, amounts equal to the payments set forth in the original contracts and not then paid. The Fleet Corporation also agreed that upon the completion of such vessels a complete audit of the items which should go to make up the price of such vessels would be made by the Fleet Corporation and that thereupon the balance determined to be due on such vessels should become immediately due and payable. Each and every action taken by the Fleet Corporation under such contract in this Article mentioned was taken by it as principal and as the real party in interest thereunder and not as the agent of the complainant, and the defendant at all times dealt with such corporation solely on such basis.

Fifty-sixth: Thereafter, and on or about November 1, 1917, Bethlehem Ship leased the defendant's plant and, at the same time, made and entered into

an agreement with the defendant whereby Bethlehem Ship became obligated as the defendant's agent to perform all of the defendant's contracts listed in such Exhibit 1, and became entitled to the benefits theretofore accrued and thereafter to accrue under such contracts; and Bethlehem Ship, with the approval of the Fleet Corporation, took over and proceeded with the completion of the vessels covered by such contracts, in accordance with the terms and provisions of the contract between the defendant and the Fleet Corporation in Article Fifty-fifth hereof set forth.

Fifty-seventh: On or about the 28th day of February, 1918, Bethlehem Ship and the Fleet Corporation entered into an agreement whereby they agreed to modify the provisions of the contracts covering the construction of Hulls numbered 134 and 135 with reference to the price to be paid by the Fleet Corporation for the work of completing such vessels so that such contracts should provide that the price which the Fleet Corporation would pay for such work should be the cost to Bethlehem Ship of constructing the same, plus a profit of ten dollars ($10) per ton deadweight capacity of such vessels, and in consideration of the agreement by Bethlehem Ship so to modify such contracts the Fleet Corporation agreed that it would pay to Bethlehem Ship for such work such cost plus such profit of ten dollars ($10) per ton deadweight capacity of such vessels.

Fifty-eighth: Thereafter, from time to time, the Fleet Corporation directed Bethlehem Ship to employ overtime in the construction of Hulls numbered 143-149, 154 and 162-169, inclusive, and on or about

the 11th day of January, 1918, agreed that it would pay to Bethlehem Ship in respect of such overtime, in addition to all other payments theretofore agreed to be paid on account of such vessels, amounts equal to 2.625 (called the "overtime co-efficient") times the bonus (i. e. the excess of wages at overtime rates as established from time to time under governmental direction over wages at regular rates so established) paid by Bethlehem Ship to its employees in respect of such overtime. Thereafter, Bethlehem Ship at the Union plant with the approval of the Fleet Corporation changed the basis of payments for week-day overtime in the construction of such vessels at such plant from time and-a-half to double-time and in addition, with like approval, used a substantially greater amount of Sunday and holiday time in the construction of such vessels than it had theretofore used, whereupon Bethlehem Ship and the Fleet Corporation agreed that the Fleet Corporation would pay to Bethlehem Ship in respect of all such overtime whether theretofore, or thereafter to be, employed by Bethlehem Ship in the construction of such vessels at the direction of the Fleet Corporation, at the rate of 2.625 times such bonus for time-and-a-half overtime, 1.8125 times such bonus in respect of week-day double-time overtime and 1.25 times such bonus in respect of Sunday and holiday double-time overtime. Bethlehem Ship in accordance with such agreements and at the direction of the Fleet Corporation, from time to time, employed overtime in the construction of such vessels and in that connection paid to its employees bonuses the aggregates of which times the applicable overtime co-efficient amounted to the sums set forth in column K of such Exhibit 3 hereto.

6

Fifty-ninth: From time to time during the period of construction of Hulls numbered 140, 142, 143-149, 154 and 162-169, inclusive, the former owners, and later, the Fleet Corporation, under and pursuant to the terms of the contracts therefor, directed that certain additions to and omissions from the plans and specifications therefor be made and such additions to and omissions from such plans and specifications were made in accordance with the orders and directions of the former owners and, later, the Fleet Corporation as aforesaid. The net cost of such additions and omissions, which by the provisions of such contract it was agreed should be added to the price of each such vessel was as set forth in column J of such Exhibit 1.

Sixtieth: On or about the 4th day of November, 1917, the Shipbuilding Labor Adjustment Board made an award whereby it, among other things, ordered and directed the employers of labor in the shipyards of the San Francisco Bay District (in which the shipyard of the defendant was located) to place in effect certain rules as to conditions of employment including a schedule of minimum wages, retroactive to September 22, 1917, and on or about the 24th day of November, 1917, the Fleet Corporation ordered and directed Bethlehem Ship immediately to put into effect, at such shipyard, the schedule of wages so ordered and directed by such Adjustment Board. On or about the 10th day of December, 1917, the Fleet Corporation notified Bethlehem Ship that the Fleet Corporation would pay, effective on and after December 15, 1917, a war service payment of ten per cent. (10%) to all employees of Bethlehem Ship at such shipyard who should

work six consecutive days in any week, the payments to be computed on straight time at the minimum rate provided in such award of such Adjustment Board, and that the Fleet Corporation would reimburse Bethlehem Ship for such payments made by Bethlehem Ship, and also for the increases in wages paid by Bethlehem Ship by reason of such award of such Adjustment Board first above mentioned. From time to time thereafter the Fleet Corporation notified Bethlehem Ship of revisions in the adjustment of wages, hours and conditions of labor in shipbuilding plants and directed Bethlehem Ship to place such revisions in effect in such shipyard, in each case agreeing to reimburse Bethlehem Ship in full for all such war service payments and all payments made on account of such increases in wages directed by such award of such Adjustment Board, as from time to time revised. Thereafter, and on or about February 1, 1918, the Fleet Corporation directed Bethlehem Ship to pay said war service payment as a part of the regular wages of its employees in addition to the wages provided by the awards of such Adjustment Board. Thereafter, the Fleet Corporation ordered and directed certain increases in the wages paid piece-workers at such shipyard, and on or about April 23, 1918, agreed to reimburse Bethlehem Ship for such increases in the wages of piece-workers authorized by it. Thereafter, and on or about the 24th day of October, 1918, such Adjustment Board ordered and directed certain additional increases in the wages of employees employed in the shipyards on the Pacific Coast, retroactive to August 1, 1918, and on or about November 5, 1918, the Fleet Corporation ordered and directed Bethlehem Ship to place such schedule in

effect in such shipyard and agreed to reimburse Bethlehem Ship for added wage costs incurred thereby. The increased cost of labor actually incurred by Bethlehem Ship in the construction of Hulls numbered 140, 142-149, 154 and 162-169, inclusive, pursuant to the aforementioned orders and directions of the Fleet Corporation and for which the Fleet Corporation agreed to reimburse Bethlehem Ship as aforesaid was as set forth in column M of such Exhibit 3.

Sixty-first: Bethlehem Ship completed such vessels so included in such requisition order and listed in column D of such Exhibit 1 in accordance with the plans and specifications therefor and delivered such vessels complete in accordance with the orders of the Fleet Corporation afloat at the Union plant on or about the dates listed in such Exhibit 1, and the Fleet Corporation thereupon took possession of and accepted such vessels. The defendant and Bethlehem Ship duly performed all the terms and conditions of all the contracts therefor on their part to be performed, and the Fleet Corporation took possession of and accepted such vessels as constructed in accordance with such plans and specifications and in accordance with the terms and conditions of such contracts.

Sixty-second: After the completion and delivery of the vessels and the acceptance thereof by the Fleet Corporation as aforesaid, a complete audit of the items of cost incurred in the construction of such vessels was made by the Fleet Corporation and completed on or about the first day of September, 1922. On such audit the Fleet Corporation found the amounts which had become payable by it to the de-

fendant and/or Bethlehem Ship on account of the construction of such vessels to be as set forth in columns I, J, K, L, M, N, O, P and Q of such Exhibit 1.

Sixty-third: From time to time during and after the period of construction thereof, the former owners, and, later, the Fleet Corporation, paid to the defendant and, later, to Bethlehem Ship, amounts on account of the construction of such vessels, the aggregates of which are as set forth in column R of such Exhibit 1.

Sixty-fourth: Although duly requested, the Fleet Corporation has failed and refused to pay on account of the construction of such vessels, the amounts set forth in column S of such Exhibit 1, and such amounts together with interest thereon from September 1, 1922, are now due and owing from the Fleet Corporation to Bethlehem Ship.

As a separate and special defense to each and every claim of the complainant based upon the averments of Articles Twenty-sixth, Twenty-seventh, Twenty-eighth, Twenty-ninth and the last sentence of Article Forty-ninth of the Bill of Complaint, the defendant, hereby reiterating each and every denial and averment hereinbefore contained, but in addition thereto, says:

Sixty-fifth: At the instance of the United States Shipping Board, and especially of Edward N. Hurley, its Chairman, and Bainbridge Colby, one of its members, Charles M. Schwab was invited by President Wilson to become Director General of the Fleet.

Corporation at a time of an acute crisis in its affairs and for the special purpose of speeding up its ship construction program. Charles M. Schwab objected to accepting the appointment, giving as one reason that he could be of more service as the head of the Bethlehem enterprises, and as a second reason that he could not entirely divest himself of his relations with Bethlehem. He was assured, however, by President Wilson and Messrs. Hurley and Colby that he need have no fear on account of his relations with Bethlehem, and he finally yielded to their urgings upon the express understanding and agreement that while Director General of the Fleet Corporation he was not to participate in any way in transactions between the Fleet Corporation and the defendants herein.

Sixty-sixth: In pursuance of such understanding and agreement and promptly after taking office, he wrote to the President and Trustees of the Fleet Corporation a letter, of which the following is a copy:

"April 30, 1918.

"To the President and Trustees of the
United States Shipping Board Emergency
Fleet Corporation:

Dear Sirs:

The United States Shipping Board Emergency Fleet Corporation, of which I have been appointed Director General, has, or may in the future have, contracts or other business relations not only with the Bethlehem Steel Corporation, of which I am an officer, director and stockholder, but also with certain of its subsidiary com-

panies in which I am directly or indirectly interested.

I am of the opinion that it would be inadvisable for me to participate, as such Director General, in the transaction of any business between the Emergency Fleet Corporation and any of the said companies, with special reference to the making of contracts with, or the giving of orders to, such companies, and, therefore, request that all business between the United States Shipping Board Emergency Fleet Corporation and the companies named below may be handled entirely by such other officers or agents of the Emergency Fleet Corporation as you may designate.

Bethlehem Steel Corporation,
Bethlehem Steel Company,
Bethlehem Steel Bridge Corporation,
Bethlehem Loading Company,
Fore River Shipbuilding Corporation,
The Detrick & Harvey Machine Company,
Bethlehem Steel Products Company,
Ore Steamship Corporation,
Saucon Land & Improvement Company,
Bethlehem Securities Company,
Bethlehem Shipbuilding Corporation, Ltd.,
Union Iron Works Company,
Union Iron Works Dry Dock Company.

Yours very truly,

CE-MS (Sgd) C. M. Schwab."

Sixty-seventh: Immediately thereafter, on May 2, 1918, in accordance with such understanding and agreement, the Board of Trustees of the Fleet Corporation formally incorporated such letter into their

minutes, and at the same time by resolution provided that all contracts before execution should be submitted to such Board for their approval. A copy of such resolution is as follows:

> "Resolved that all contracts of the United States Shipping Board Emergency Fleet Corporation, after they are approved by the Vice-President and Secretary, whether for the Operating or Construction Divisions, be submitted to the Board of Trustees for their approval and then approved by the officers of the Corporation authorized by the Board of Trustees and formally executed."

Charles M. Schwab was never at any time a member of the Board of Trustees of the Fleet Corporation.

Sixty-eighth: Charles M. Schwab faithfully carried out such understanding and agreement and did not at any time take any part in the relations between the Fleet Corporation and the defendants herein.

Insufficiency of Bill of Complaint

Sixty-ninth: Further answering the bill of complaint, and in lieu of motions to dismiss the bill of complaint or parts thereof before answer, the defendant says that the complainant is not entitled to recover of the defendant in this action because it has not stated facts sufficient to constitute a valid cause of action in equity against the defendant, and that the complainant is not the proper party to bring this action.

Claim for Credit

Seventieth: Not waiving but insisting on the defenses hereinbefore pleaded, but in addition thereto, the defendant repeats and reavers each and every averment of Article Fifty-fourth to Sixty-fourth, inclusive, hereof with the same force and effect as if herein again alleged in full and says that Bethlehem Ship has duly presented to the Fleet Corporation and to the United States Shipping Board all of the defendant's and/or Bethlehem Ship's claims on account of the transactions in said Articles set forth and the Fleet Corporation and said Shipping Board have disallowed such claims, and that if the complainant shall be found entitled to bring this action in its own name and to recover therein, any amount or amounts to which the complainant may become entitled on account of any of the transactions herein set forth, should be reduced by the amounts now due and owing from the Fleet Corporation hereinbefore set forth, so that the complainant should recover nothing.

Counterclaim

Seventy-first: Not waiving but insisting on the defenses pleaded in the foregoing answer, but in addition thereto, the defendant repeats and reavers the averments in Articles Fifty-fourth to Sixty-fourth, inclusive, hereof set forth with the same force and effect as if herein again averred in full, and says that if the complainant shall be found entitled to bring this action in its own name, the defendant should recover of the complainant the sum of Two hundred forty-one thousand four hundred

seventy-four dollars and fifty-seven cents ($241,474.57), together with interest thereon from September 1, 1922, and the costs and disbursements of this action.

Wherefore, the defendant prays:

1. That the bill of complaint be, in all respects, dismissed, with the costs of this action.

2. That if the above prayer be not granted, then that the defendant recover of the complainant the sum of Two hundred forty-one thousand four hundred seventy-four dollars and fifty-seven cents ($241,474.57), together with interest thereon from September 1, 1922, and the costs and disbursements of this action.

3. That the defendant have such other and further relief as may be just and equitable.

CHARLES SINKLER,
Solicitor for the Defendant Union Iron Works Company.

CRAVATH, HENDERSON & DE GERSDORFF,
of Counsel.

July 25, 1925.

COMPLAINANT'S REPLY TO THE CLAIM FOR CREDIT AND COUNTERCLAIM OF THE DEFENDANT, BETHLEHEM SHIPBUILDING CORPORATION, LIMITED TO THE BILL OF COMPLAINT

(Filed April 15, 1929)

Comes now the complainant, the United States of America, by George W. Coles, United States Attorney for the Eastern District of Pennsylvania, its solicitor, and for its reply to the answer, claim for credit and counterclaim of the defendant, the Bethlehem Shipbuilding Corporation, Ltd., states as follows:

First. Complainant avers that the name of the United States Shipping Board Emergency Fleet Corporation was changed to United States Shipping Board Merchant Fleet Corporation by Act of Congress approved February 11, 1927, known as Independent Offices Appropriation Act, 1928. Hereinafter in this reply the United States Shipping Board Merchant Fleet Corporation will be referred to as the Fleet Corporation.

Second. Replying to paragraph Thirty-seventh of defendant's answer, claim for credit and counterclaim, complainant denies that any vessels whatever were constructed by defendant for the Fleet Corporation or that the Fleet Corporation made or entered into any contracts whatever with the defendant for the construction of plant facilities or other-

wise, or that the Fleet Corporation paid or disbursed from its own moneys any amount or amounts to the defendant. Complainant denies further that Exhibit 2 attached to defendant's answer contains a true and correct statement of the transactions referred to or the accounts covering such transactions. Complainant denies further that the contracts and authorizations referred to were made or given by the Fleet Corporation as principal and as the real party in interest, and avers that such contracts and authorizations were made and given by the Fleet Corporation solely in the capacity of agent of the United States of America and that the defendant at all times dealt with the Fleet Corporation in that capacity having full knowledge of such agency. Complainant denies that the defendant at the direction and approval of the Fleet Corporation and in accordance with the terms of said contracts and authorizations provided facilities as specified in column A of Exhibit 2 of defendant's answer at a cost to defendant as specified in column B of said exhibit.

Complainant denies that column C of said Exhibit 2 correctly sets forth the amount of moneys of complainant disbursed by the Fleet Corporation on account of said improvements and facilities. Complainant avers that the amounts of moneys of the complainant so disbursed were as follows:

Shipyard Plant:	Amount
(a) Union (Alameda)	$1,549,848,68
(b) Sparrows Point	2,616,789.71
(c) Sparrows Point	291,143.29
(d) Sparrows Point	33,719.81
(e) Harlan	140,711.02

(f) Home Office Building of South Bethlehem	200,000.00
Gross Total	$4,832,212.51

Complainant admits that its agent, the Fleet Corporation, has not paid the amounts set forth in column B and column E of said Exhibit and denies that either the complainant or the Fleet Corporation is obligated in any way to make such payments under the terms of the said contracts and authorizations or otherwise.

Complainant denies that defendant entered into agreements for the purchase of said improvements and facilities in February, 1920, or at any other time with representatives of the Fleet Corporation having authority to make such agreements. Complainant denies that defendant made an unqualified offer of about $1,300,000 for the said improvements and facilities and complainant avers that the alleged offer was contingent upon the payment by the United States of America of large amounts in settlement of baseless and unconscionable claims submitted by the defendant. Complainant admits that defendant notified the Fleet Corporation to remove the dredging, sewers, filling from lowlands, roadway improvements, building slips, and other improvements and facilities, such facilities being either incapable of removal or incapable of removal without destruction of all practical value and without an expenditure of enormous sums to restore the property of defendant that would have to be damaged or destroyed in the removal of said improvements and facilities. Complainant denies that the Fleet Corporation on its own behalf or as agent

of its principal, the United States of America, has abandoned said improvements and facilities to the defendant. Complainant avers that by the very nature of the said improvements and facilities they must either be destroyed by removal or remain as an integral part of the defendant's shipbuilding property; that the defendant well knew at the time the contracts and authorizations heretofore referred to were made and given that the improvements and facilities to be constructed thereunder could not be removed without practical destruction. Complainant avers that the said contracts and authorizations were utterly unconscionable in their terms and, therefore, were null and void; and complainant avers that the defendant should be required to return to complainant all the moneys wrongfully and unlawfully obtained under the said agreements and authorizations.

Third. Replying to paragraph Fifty-fourth of defendant's answer, claim for credit and counterclaim, the complainant denies that the defendant and the Fleet Corporation made and entered into the contracts referred to in said paragraph and further denies that each and every transaction under said contracts was carried out by the Fleet Corporation as the real party in interest thereunder. Complainant avers that each and every one of the contracts referred to in said paragraph are contracts between the defendant and the complainant, the United States of America; that said contracts were made and entered into by the complainant, the United States, acting through its authorized agent, the Fleet Corporation, which had been designated as such agent by an Executive Order of the President

of the United States dated July 11, 1917, and which was issued pursuant to the authority granted the President by the Emergency Shipping Fund Provision of the Urgent Deficiencies Appropriation Act approved June 15, 1917; that the Fleet Corporation has not and never has had any right, title, or interest in or to any of the contracts mentioned or any of the ships to be built thereunder, or any of the claims or causes of action against the defendant; that the fact of such agency was fully disclosed to the defendant long before any of said contracts were entered into and that the defendant at all times dealt with the Fleet Corporation solely as an agent of the complainant.

Fourth. Replying to paragraph Fifty-fifth of defendant's answer, claim for credit and counterclaim, the complainant avers that the directions given the defendant to suspend work on certain hulls, as well as the directions given to the defendant to cancel the contracts for the construction of certain hulls, were given by the Fleet Corporation as the agent and representative of the United States pursuant to the Executive Order of July 11, 1917, and the Emergency Shipping Fund Provision of the Urgent Deficiencies Appropriation Act approved June 15, 1917.

Fifth. Replying to paragraph Fifty-sixth of defendant's answer, claim for credit and counterclaim, the complainant avers that the notices, instructions, etc., mentioned in said paragraph were given by the Fleet Corporation solely as agent and representative of the United States pursuant to the Executive Order of the President and the laws of the United States heretofore mentioned.

Sixth. Replying to paragraph Fifty-seventh of the defendant's answer, claim for credit and counterclaim, the complainant avers that the notices, instructions, etc., mentioned in said paragraph were given by the Fleet Corporation solely as an agent and representative of the United States pursuant to the Executive Order of the President and the laws of the United States heretofore mentioned.

Seventh. Replying to paragraph Fifty-eighth of defendant's answer, claim for credit and counterclaim, the complainant avers that the contract mentioned in said paragraph was canceled by the Fleet Corporation, acting as an agent of the United States, pursuant to the authority above mentioned.

Eighth. Replying to paragraph Fifty-ninth of defendant's answer, claim for credit and counterclaim, the complainant avers that the modifications and instructions referred to in said paragraph were given by the Fleet Corporation as the agent of the United States pursuant to the authority above mentioned.

Ninth. Replying to paragraph Sixtieth of defendant's answer, claim for credit and counterclaim, the complainant avers that the instructions regarding the suspension and cancellation mentioned in said paragraph were given by the Fleet Corporation as the agent of the United States pursuant to the authority above mentioned.

Tenth. Replying to paragraph Sixty-first of defendant's answer, claim for credit and counterclaim, the complainant denies that the defendant agreed to construct any vessels whatever for the Fleet Corporation or that any changes were au-

thorized by the Fleet Corporation except as the agent of the United States. Complainant further denies that any vessels were delivered to the Fleet Corporation except as the agent of the United States, but avers that the contracts referred to were contracts between the defendant and the United States and that all the transactions of the Fleet Corporation were made and performed by it as the agent of the United States pursuant to the authority above mentioned.

Eleventh. Replying to paragraph Sixty-second of defendant's answer, claim for credit and counterclaim, the complainant denies that the rate of wages actually paid by the defendant in the construction of the vessels referred to in said paragraph was by the direction or with the approval of the Fleet Corporation, increased over the schedule of wages provided in Article XIX of each of the contracts referred to in said paragraph.

The complainant avers that in all of the said contracts except Contracts Nos. 177 S. C., 191 S. C., 230 S. C. and 301 S. C., the language of Article XIX of each of said contracts is so uncertain, indefinite, and conflicting that it is impossible to say what schedule is meant thereby and that with the exception of wage increases paid to subcontractors it is impossible to determine the increased labor costs over and above such an uncertain, indefinite, and conflicting base, and complainant avers that the increase in cost due to wage increases to employees of subcontractors on said contracts, and the amounts by which the labor cost actually incurred in the construction of the vessels built under Contracts Nos. 177 S. C., 191 S. C., 230 S. C., and 301 S. C. was in-

creased over the labor cost that would have been incurred if the schedules referred to in Article XIX of said contracts had remained in force during the period of construction, are as follows:

Line No.	Contract No.	Exhibit No. referred to in Exhibit 1 of defendant's answer	Amount
1	177	5	$1,572,938.47
2	178	6	5,220.04
3	179	7	1,069.69
4	182	8	.00
5	183	9	.00
6	184	10	3,987.46
7	191	11	145,190.56
8	196	12	317.50
9	226	13	2,080.61
10	230	14	205,264.79
11	299	15	.00
12	300	16	560.86
13	301	17	898,230.47
14	312	18	.00
15	313	19	.00
16	314	20	5,418.52
17	340	21	.00
18	465	22	.00
			$2,840,278.97

Complainant avers further that if the court should determine that the wage increase provisions of said Article XIX of Contracts Nos. 178 S. C., 179 S. C., 183 S. C., 184 S. C., 196 S. C., 226 S. C., 299 S. C., 300 S. C., 312 S. C., 313 S. C., 314 S. C., and 465

S. C., are not void for uncertainty, then and in that event, the complainant avers that the only schedule of wages referred to in Article XIX of each said contract that can be identified is the schedule of wages promulgated by the Shipbuilding Labor Adjustment Board under date of February 14, 1918, for the Harlan and Sparrows Point shipyards, and under date of April 6, 1918, for the Fore River and Moore shipyards. Complainant avers that the aggregate amount by which the actual labor cost of the vessels constructed under said contracts was increased over the labor cost that would have been incurred if the said schedules of the Shipbuilding Labor Adjustment Board had remained in force was, as found by audit to be as follows:

Contract No.	Amount
178	$415,530.84
179	243,927.50
183	371,666.99
184	400,369.64
196	2,654.94
226	679,185.12
299	319,025.08
300	334,415.07
312	.00
313	.00
314	1,146,620.48
465	.00
	3,913,395.66

Twelfth. Replying to paragraph Sixty-third of defendant's answer, claim for credit and counterclaim, the complainant admits that from time to time during the construction of said vessels certain

changes in the plans and specifications were made, but complainant avers that such changes were made on orders of the complainant acting through its agent, the Fleet Corporation. Complainant denies that the net amount by which the estimated cost of such vessels specified in Article XIX of such contract was increased or diminished on account of such changes was as set forth in column (f) of Exhibit 1 referred to in said paragraph.

Complainant admits that, with the exception of the amount on line No. 18, the amounts by which the costs of said vessels were increased as a result of changes in plans and specifications are set forth correctly in column (f) of Exhibit 1, attached to defendant's answer. Complainant avers with respect to the amount shown on line No. 18 of column (f) of said Exhibit 1 that the amount of increase in cost due to changes in plans and specifications under Contract No. 465 is immaterial for the reason that complainant and the defendant have by stipulation agreed, for the purpose of determining the excess of the estimated cost as revised in accordance with Article XIX of said contract over the actual cost of the completed vessels built under said contract, that the revised estimated cost of each of said vessels was in excess of the actual cost thereof by an amount such that the difference between the actual and revised estimated cost was in excess of $400,000.00.

Thirteenth. Replying to paragraph Sixty-fourth of the defendant's answer, claim for credit and counterclaim, the complainant avers that all changes and additions or modifications ordered by the Fleet Corporation were ordered by said Fleet Corporation as

the agent and representative of the United States, and not in its own behalf. Complainant denies that by reason of such changes the estimated cost of each of three vessels specified in Article XIX of such contract was increased by more than $1,440,000 and that the fixed sum for profit for each of such three vessels was increased by more than the sum of $105,000. Complainant further denies that the Fleet Corporation, either on its own behalf or as the agent of the United States, made and entered into an agreement on or about April 8, 1921, or at any other time, whereby it was agreed that the sum by which such estimated cost of each of such vessels should be increased on account of such changes made up to March 1, 1921, should be fixed at such sum of $1,440,000 and that the sum by which such fixed sum for profit for each of such three vessels should be increased on account of such changes should be fixed at such sum of $105,000. Complainant denies that the net amount by which the estimated cost of such three vessels was increased by said changes after March 1, 1921, was $1,183,773. The complainant further denies that by reason of all the changes referred to in said paragraph the net amount of the estimated cost of such three vessels was increased at least $5,503,773 or that the net amount of the increase in the fixed sum for profit for each of such vessels was increased $135,353.12. Complainant avers that the total amount of the increase in the estimated cost of said three vessels on account of changes, extras, and modifications is immaterial for the reasons stated heretofore in paragraph twelfth hereof.

Fourteenth. Replying to paragraph Sixty-fifth of defendant's answer, claim for credit and counter-

claim, the complainant admits the allegations therein contained, but avers that for the reasons stated in paragraph Twelfth of this reply the averments contained in said paragraph are wholly immaterial to any issue involved in this litigation.

Fifteenth. Replying to paragraph Sixty-sixth of defendant's answer, claim for credit and counterclaim, the complainant admits that after the completion and delivery of the vessels therein referred to the Fleet Corporation made an audit of the total cost of such completed vessels and the total cost of the canceled vessels. The complainant admits that the Fleet Corporation made a determination of the revised estimated cost as provided in Article XIX of each such contract in so far as said article could be interpreted. Complainant denies that the cost and expenditure incurred by the defendant determined as provided in Article XVII of each such contract and the revised estimated cost thereof were found by the Fleet Corporation upon audit to be, and approved by it as set forth in column H and column G, respectively, of Exhibit 1 attached to defendant's answer. Complainant avers that the costs as found by audit are as shown in column 6 of Complainant's Exhibit A hereto attached, and the revised estimated cost, in so far as it was possible to determine such revised estimated cost, was as follows:

Line No.	Contract No.	Exhibit referred to in Ex. 1 of Deft's Answer	Revised Estimated Cost
1	177	5	$27,073,433.75

Line No.	Contract No.	Exhibit referred to in Ex. 1 of Deft's Answer	Revised Estimated Cost
2	178	6	9,080,179.04
3	179	7	6,235,397.69
4	182	8	.00
5	183	9	5,582,209.00
6	184	10	6,389,863.70
7	191	11	8,762,951.08
8	196	12	1,301,257.61
9	226	13	12,011,482.61
10	230	14	4,372,868.99
11	299	15	5,539,419.00
12	300	16	6,041,599.86
13	301	17	19,769,762.50
14	312	18	.00
15	313	19	.00
16	314	20	1,878,519.02
17	340	21	.00
18	465	22	16,271,907.16

Sixteenth. Replying to paragraph Sixty-seventh of defendant's answer, claim for credit and counterclaim, complainant denies that the defendant incurred items of cost in the amounts as set forth in column I of Exhibit 1, or in any other amount. Complainant denies that the actual cost of the vessels under each such contract determined under provisions of Article XVII of each such contract was as set forth in column J of Exhibit 1, and complainant avers that the actual cost of such vessels, including the cost of surplus materials, was no greater sum than the figures shown in column

6, headed "Total cost", on Exhibit A, attached to this reply.

Seventeenth. Replying to paragraph Sixty-eighth of the defendant's answer, claim for credit and counterclaim, complainant denies that all the materials and supplies purchased for and not used in the construction of the vessels referred to became and remained the property of the Fleet Corporation. The complainant avers that such materials and supplies were at all times the property of the complainant. Complainant admits that the value of such materials and supplies was determined by the Fleet Corporation, acting as an agent of complainant. Complainant denies that the cost of the vessels after deducting the value of surplus materials was as set forth in column K of Exhibit 1 attached to the defendant's answer. Complainant avers that the actual cost of such vessels after deducting the value of the surplus materials and supplies was as follows:

Contract No.:	Net Amount after Deducting Value of Surplus Materials
177	$22,412,491.57
178	9,757,562.79
179	5,552,545.07
182	11,195,659.89
183	5,287,865.43
184	6,086,293.48
191	6,345,388.74
196	1,123,782.08
226	10,891,429.05
230	3,192,236.09
299	4,848,595.35
300	5,122,587.87

Contract No.:	Net Amount after Deducting Value of Surplus Materials
301	15,274,468.69
314	13,021,970.30
465	15,071,907.16

Eighteenth. Replying to paragraph Sixty-ninth of defendant's answer, claim for credit and counterclaim, the complainant denies that the amount of difference between the revised estimated cost of the vessels under each of said contracts and the actual cost thereof reduced by the value of such surplus materials and supplies is as set forth in column L of Exhibit 1 attached to the defendant's answer. Complainant avers that the difference between the actual cost of such vessels reduced as aforesaid by such cost of surplus materials and supplies and the revised estimated cost of the vessels, in so far as such estimated cost can be revised, is as follows:

Contract No.:	Excess of revised estimated cost over actual net cost
177	$ 4,660,942.18
178	677,383.75 rel
179	682,852.62
182	.00
183	294,343.57
184	303,570.22
191	2,417,562.34
196	177,475.53
226	1,120,053.56
230	1,180,632.90
299	690,823.65
300	919,011.99
301	4,495,293.81

Contract No.:	Excess of revised estimated cost over actual net cost
312	.00
313	.00
314	1,143,451.28 red
340	.00
465	1,200,000.00
	16,321,727.34

Complainant denies that the amounts of such difference are savings or that the defendant is entitled to any part of such amounts for the reasons set forth in the complaint.

Nineteenth. Replying to paragraph Seventieth of defendant's answer, claim for credit and counterclaim, complainant admits that with the exception of the amounts stated in line 4 and line 18 of column M of said Exhibit 1 the amounts there set forth are the fixed fees specified in or calculated in accordance with such contracts. Complainant avers that the correct amount of fixed fees for profit calculated in accordance wtih the terms of Contract No. 182 is $1,119,565.99, instead of the sum of $1,121,575.71, as shown on line 4, column M, of defendant's Exhibit 1; and that the correct amount of fixed fees for profit for both completed and cancelled ships, calculated in accordance with the terms of Contract No. 465, is $1,428,203.52, instead of the sum of $1,599,621.49, as shown in column M, line 18, of defendant's Exhibit 1. And complainant further avers that all of said contracts referred to in said paragraph in so far as they relate to the compensation to be paid the defendant are invalid and not binding upon the claimant for the reasons set forth in the

complaint and that the amount of compensation to which the defendant is entitled on each of said contracts is not in excess of the sums shown in column 11 of Exhibit A, hereto attached.

Twentieth. Replying to paragraph Seventy-first of defendant's answer, claim for credit and counterclaim, complainant denies that any sum whatever is due from the Fleet Corporation or from the complainant to the defendant on account of savings.

Twenty-first. Replying to paragraph Seventy-second of defendant's answer, claim for credit and counterclaim, complainant admits that the defendant kept accounts of the cost of construction of the vessels therein referred to and that the Fleet Corporation, as agent of the United States of America, checked such accounts from time to time. Complainant avers that the accounts of defendant as checked by the Fleet Corporation were found to be improperly kept, but owing to the fact that the Fleet Corporation, as agent of the complainant, was paying all costs of construction currently, it was necessary to make payments without adequate investigation at the time. Complainant admits that upon the completion of the vessels the Fleet Corporation, acting as aforesaid, made an audit of the actual cost of such vessels. The complainant avers that all payments referred to in said paragraph Seventy-second were made by the Fleet Corporation, as agent of the United States of America, from moneys of the United States of America, and that all payments on account of alleged savings were made by mistake of fact and by mistakes of law. The complainant denies that the amounts so paid by the Fleet Corporation to the defendant on account of such actual

costs, such fixed fees, and such savings are as set forth in columns O, P, and Q, respectively, of Exhibit 1, attached to defendant's answer. Complainant avers that the amounts of such payments are as set forth in columns 7, 12, 15, and 17 of Exhibit A, hereto attached.

Twenty-second. Replying to paragraph Seventy-third of defendant's answer, claim for credit and counterclaim, complainant admits that the Fleet Corporation has failed and refused to pay the amounts set forth in columns R, S, T, and U, respectively, of Exhibit 1 to defendant's answer. Complainant denies that such amounts, together with interest thereon from September 1, 1922, are now due and owing from the Fleet Corporation or from the complainant to the defendant. Complainant avers that by mistakes of fact and mistakes of law the Fleet Corporation, acting as agent for the complainant, by payments set forth in columns 7, 12, 15, and 17 of Exhibit A, hereto attached, has largely overpaid the defendant on account of the cost of construction of said vessels and on account of the profits properly payable to the defendant for the construction of such vessels. Complainant avers that a correct statement of the amounts of such overpayments on account of cost, fixed fees, and savings is shown in columns 8, 13, 15 and 18 of Exhibit A, attached hereto.

Twenty-third. Replying to paragraph Seventy-fourth of defendant's answer, claim for credit and counterclaim, complainant admits the averments therein contained.

Twenty-fourth. Replying to paragraph Seventy-fifth of defendant's answer, claim for credit and

counterclaim, the complainant denies that on or about the dates, respectively, specified in column G of Exhibit 3 attached to defendant's answer the shipbuilders listed in column A thereof, respectively, and the Fleet Corporation, acting as principal, entered into the contracts in writing referred to; and complainant further denies that the Fleet Corporation, on its own behalf, made any agreement or agreements whatever concerning the completion of said ships, or otherwise. Complainant further denies that the Fleet Corporation assumed or agreed to assume any liability whatever in connection with said contracts or said ships. The complainant avers that the ships referred to in said paragraph were requisitioned by the United States, acting through the Fleet Corporation as its agent, on August 3, 1917, and that the President of the United States, acting through the Fleet Corporation as agent, ordered the completion of said vessels. Complainant further avers that contracts for the completion of said vessels were entered into between the respective shipbuilders mentioned in said paragraph and the United States of America, acting through the Fleet Corporation as its agent, and not otherwise. Complainant admits that on final acceptance of each such vessel the defendant agreed to give a bill of sale to the United States in satisfactory form conveying all the right, title, and interest of the shipbuilder in such vessel to the United States. The complainant avers that the contracts entered into between the defendant and the United States provided that for the work of completion the shipbuilders should be paid amounts equal to the payments set forth in the original contracts and not then paid. Complainant further denies that the

Fleet Corporation agreed, upon completion of such vessels, a complete audit of the items which should go to make up the price of such vessels would be made by the Fleet Corporation and that thereupon the balance determined to be due on such vessels should become immediately due and payable. Complainant avers that no such agreement was made by the Fleet Corporation either in its own behalf or as an agent of the United States, except that as agent of the United States the Fleet Corporation did agree to make an audit of the cost of the ships that were to be completed on a cost plus basis.

Complainant denies that each and every action taken by the Fleet Corporation under such contracts was taken by it as principal and as the real party in interest thereunder, but avers that each and every action of the Fleet Corporation under such contracts and every transaction connected with the building of said ships was taken as the agent of the United States of America pursuant to the Emergency Shipping Fund Provision of the Urgent Deficiencies Appropriation Act of June 15, 1917, and the Executive Order of the President of the United States designating the Fleet Corporation as the agent of the United States for the purpose of requisitioning ships and securing the completion thereof. Complainant further denies that any of said shipbuilding companies named in paragraph Seventy-fifth dealt with the Fleet Corporation as principal, but avers that such shipbuilding companies at all times dealt with the Fleet Corporation solely as an agent of the United States.

Twenty-fifth. Replying to paragraph Seventy-sixth of defendant's answer, claim for credit and

counterclaim, complainant denies that the contracts referred to were contracts between such corporations and the Fleet Corporation, but avers that the contracts referred to were contracts between such corporations and the United States of America represented by the Fleet Corporation.

Twenty-sixth. Replying to paragraph Sixty-seventh of defendant's answer, claim for credit and counterclaim, the complainant denies that the contracts referred to in said paragraph were contracts between the Fleet Corporation on the one hand and Samuel L. Moore & Sons Corporation and Harlan & Hollingsworth Corporation on the other. Complainant avers that said contracts were contracts between Moore and Harlan and the United States of America, represented by the Fleet Corporation as agent.

Twenty-seventh. Replying to paragraph Seventy-eighth of defendant's answer, claim for credit and counterclaim, complainant denies that the Fleet Corporation entered into any of the agreements mentioned therein as principal, but avers that such agreements, modifications and changes were made by the defendant and the complainant acting through its agent, the Fleet Corporation.

Twenty-eighth. Replying to paragraph Seventy-ninth of defendant's answer, claim for credit and counterclaim, the complainant denies that the Fleet Corporation entered into any of the agreements mentioned in said paragraph. Complainant avers that the contracts for the construction of the hulls mentioned in said paragraph were changed and modified so that the defendant should be entitled to

cost plus a profit of $10 per dead-weight ton on such vessels.

Twenty-ninth. Replying to paragraph Eightieth of defendant's answer, claim for credit and counterclaim, the complainant denies each and every allegation contained in said paragraph and refers to the allegations contained in paragraphs Fortieth to Forty-eighth, inclusive, of complainant's complaint, which paragraphs are specifically herein reaverred. Complainant denies that the aggregate of the bonuses paid to the workmen multiplied by the alleged applicable overtime coefficient amounted to the sums set forth in column K of defendant's Exhibit 3, and avers that the sums set forth in said column K are inconsistent with the sums stipulated and agreed to by both parties as correct, and inconsistent with the sums set forth in Exhibit 2, attached to the reply of the Bethlehem Shipbuilding Corporation, Ltd., in its suit against the Fleet Corporation, No. 11970 in this court, and which said Exhibit 2 correctly sets forth the combined sums of the overtime bonus paid to the workmen, and the excess over the bonus which was paid to the defendant by the Fleet Corporation, as agent of the United States, without consideration and without any warrant in fact or in law. Complainant avers that the amounts paid by Fleet Corporation on behalf of complainant to defendant on account of overtime bonus paid to workmen are correctly set forth in column 6 of Exhibit B, hereto attached.

Thirtieth. Replying to paragraph Eighty-first of defendant's answer, claim for credit and counterclaim, the complainant denies that the Fleet Corporation, as principal, entered into any of the con-

tracts or agreements mentioned in said paragraph. Complainant avers that the defendant and the complainant, the United States of America, acting through its agent, the Fleet Corporation, entered into an agreement by which the defendant should be reimbursed for certain payments made to foremen, assistant foremen, leading men, and other heads of departments in order to expedite the completion of the hulls mentioned in said paragraph. Complainant admits that the amount of such payments to which the defendant is entitled as a credit is correctly set forth in column L of Exhibit 3, attached to defendant's answer.

Thirty-first. Replying to paragraph Eighty-second of defendant's answer, claim for credit and counterclaim, the complainant denies that the Fleet Corporation, as principal, gave any orders or directions to the defendant concerning additions to and omissions from the plans and specifications for the vessels mentioned in said paragraph. Complainant avers that such orders and directions were given by the complainant, acting through the Fleet Corporation as agent. Complainant denies that the net cost of such additions and omissions is as set forth in column J of Exhibit 3, attached to defendant's answer, but avers that the proper and correct net cost of such additions and omissions is as set forth in column 5 of Exhibit B, hereto attached.

Thirty-second. Replying to paragraph Eighty-third of defendant's answer, claim for credit and counterclaim, the complainant denies that the $0.60 per dead-weight ton provision therein referred to is legally binding upon the complainant or its agent, the Fleet Corporation, in that it provides for ex-

cessive, unreasonable, and unconscionable profits for which there is no consideration, and for the further reason that the said provision was superseded by an agreement under which the complainant acting through its agent, the Fleet Corporation, agreed with the defendant to reimburse, and did reimburse the defendant for the actual additional cost due to increases in wage rates over the base rates specified in the contract, and defendant agreed to accept and did accept said reimbursement, and defendant is entitled to receive from complainant only such amount as represents the actual increase in wages paid by it over and above the amount of wages which would have been paid by it at the rates in force at the date of said contracts increased by 10 per cent, which increase amounts to the sums set forth in column 8, lines 16, 17, 20, and 21 of Exhibit B, hereto attached.

Thirty-third. Replying to paragraph Eighty-fourth of defendant's answer, claim for credit and counterclaim, the complainant denies that there became due from the Fleet Corporation to the defendant on account of the matters alleged in said paragraph any sum whatever. Complainant admits that there became due from the complainant to the defendant credits equal to the amounts set forth in column N of Exhibit 3, attached to defendant's answer.

Thirty-fourth. Replying to paragraph Eighty-fifth of defendant's answer, claim for credit and counterclaim, the complainant denies that on or about February 1, 1918, the Fleet Corporation, as principal or as agent of the complainant, directed the defendant to pay certain war service payments

as a part of the regular wages of its employees in addition to the wages provided by the Shipbuilding Labor Adjustment Board. Complainant avers that on or about December 10, 1917, the Fleet Corporation, as agent of the complainant, notified the defendant that on February 1, 1918, the said 10 per cent increase would be effective as a regular permanent part of the wage schedule effective after that date. The complainant denies that the Fleet Corporation, as principal, agreed to reimburse the defendant for any of the payments averred in said paragraph, but admits that the Fleet Corporation, as agent of the complainant, agreed to reimburse the defendant for increases due to such awards of the Shipbuilding Labor Adjustment Board and orders given by the Fleet Corporation as agent of the complainant. Complainant denies that the increased costs of labor actually incurred by the defendant in the construction of the hulls mentioned in said paragraph were as set forth in column M of Exhibit 3, attached to defendant's answer. Complainant avers that the increased costs of labor actually incurred by the defendant for the construction of the hulls mentioned in said paragraph are as set forth in column 8 of Exhibit B, hereto attached.

Thirty-fifth. Replying to paragraph Eighty-sixth of the defendant's answer, claim for credit and counterclaim, the complainant denies that the defendant duly performed all the terms and conditions of all the contracts for said vessels in that defendant did not keep accurately the costs of the construction of certain of said vessels. Complainant further denies that any of the said vessels were completed in accordance with the orders of the

Fleet Corporation as principal or that hull No. 142 was ever completed either for the Fleet Corporation as principal, or for the complainant. Complainant avers that hulls Nos. 450 and 451 were cancelled and never completed. Complainant denies that any of said vessels were ever delivered to or accepted by the Fleet Corporation as principal. Complainant avers that such of the vessels as were completed were delivered to and accepted by the United States of America.

Thirty-sixth. Replying to paragraph Eighty-seventh of defendant's answer, claim for credit and counterclaim, the complainant denies that the defendant obtained for Fore River any of the materials mentioned in said paragraph. Complainant avers that said materials were obtained for Fore River by the Fleet Corporation, acting as an agent of the United States, and by Luckenbach, the former owner, from other contractors, the cost of which aggregates $233,600.00, which was paid by said Luckenbach and the complainant, acting through the Fleet Corporation, direct to such contractors. Complainant denies that the total actual cost of constructing hulls Nos. 297 and 298 determined in accordance with the provisions of such contracts was $5,225,339.31, but avers that such cost was $4,934,702.16. Complainant denies that the said sum of $233,600.00 spent for materials by Luckenbach and by the complainant constituted any part of the cost of said hulls on which the defendant was entitled to profit.

Thirty-seventh. Replying to paragraph Eighty-eighth of defendant's answer, claim for credit and counterclaim, complainant denies that the defendant

purchased from the Fleet Corporation, as principal, any materials whatever. Complainant avers that the defendant purchased such materials in the sum of $32,196.42 from the complainant, and the defendant agreed that for the purpose of determining profit payable to defendant there should be deducted from the total cost of constructing the vessels the sum of $32,196.42. Complainant denies that the actual cost so reduced was the sum of $5,193,142.89, and avers that the said sum was $4,906,562.05, and no more, made up as follows:

Total cost of construction	$4,934,702.16
Plus unclaimed wages added for profit purposes only	4,063.91
Gross total	$4,938,766.07
Deduct surplus materials	32,196.42
Total cost to bear profit	$4,906,569.65

Thirty-eighth. Replying to paragraph Eighty-ninth of defendant's answer, claim for credit and counterclaim, the complainant denies that the Fleet Corporation accepted any of the vessels mentioned in said paragraph. Complainant avers that the vessels were accepted by the United States and for the United States, through the agency of the Fleet Corporation, and were receipted for in that manner. Complainant denies that the Fleet Corporation found that any amount whatever had become payable by it to the defendant on account of the construction of such vessels, and the complainant further denies that the amounts which the Fleet Corporation found on audit should be credited to the defendant were as set forth in columns I, J,

K, L, M, N, O, P, and Q of Exhibit 3, attached to defendant's answer. Complainant avers that the amounts which the Fleet Corporation found should be credited by its principal, the complainant, to the defendant, on account of the construction of said vessels are as set forth in columns 4, 5, 6, 7, 8, 9, 10, 11, and 12, of Exhibit B, hereto attached.

Thirty-ninth. Replying to paragraph Ninetieth of defendant's answer, claim for credit and counterclaim, complainant denies that the amounts paid to the shipbuilders and to the defendant by the former owners and the Fleet Corporation are as set forth in column R of Exhibit 3, attached to defendant's answer. Complainant avers that the amounts which were paid to the said shipbuilders and to the defendant by the former owners and by the Fleet Corporation, acting as agent of the complainant, and from the funds of the complainant, are as set forth in column 13 of Exhibit B, hereto attached.

Fortieth. Replying to paragraph Ninety-first of defendant's answer, claim for credit and counterclaim, the complainant admits that the Fleet Corporation has failed and refused to pay the amounts set forth in column S of Exhibit 3, attached to defendant's answer. Complainant avers that none of the amounts set forth in column S of such exhibit is due from or payable by the Fleet Corporation to the defendant, and complainant further avers that the amounts set forth in said column S of such Exhibit 3 do not correctly represent balances in the accounts between the complainant and the defendant. Complainant avers that through mistakes of fact and mistakes of law the Fleet Corporation, as

agent of the complainant, has largely overpaid the defendant from moneys of the complainant to an extent the aggregate of which is $1,316,631.07, as shown in column 14 of Exhibit B, hereto attached.

Forty-first. Replying to paragraph Ninety-second of defendant's answer, claim for credit and counterclaim, the complainant denies each and every allegation in said paragraph contained and denies that the audits referred to therein were delayed to any extent by the complainant or by its agent, the Fleet Corporation, or that the defendant has sustained any damage whatsoever by reason of any fault of the complainant or its agent, the Fleet Corporation, and, on the contrary, complainant avers that the delay in making said audits was due solely to the fault and misconduct of the defendant. Complainant avers that in accordance with the terms of said contracts the complainant was required to establish and keep suitable and accurate accounts and records so as to show therein the actual cost of all work done and performed by the defendant. Complainant further avers that at the completion of the work the Fleet Corporation, acting for its principal, the complainant, did attempt to audit the accounts of the defendant and found that the defendant, in violation of the terms of said contracts and of its duty and obligations to the complainant, had failed and neglected to establish and keep suitable accounts and records, but, on the contrary, wrongfully and knowingly established and kept unsuitable, misleading and erroneous records in the keeping of said accounts, and not only created and maintained such misleading and erroneous records, but changed and altered records so that the accounts were presented

falsely and made to show improper credits to the defendant of more than $5,000,000.00, with the result that the complainant, through its agent, the Fleet Corporation, was forced to reaudit the books and records of the defendant at great expense to the complainant.

Forty-second. Replying to paragraph Ninety-third of defendant's answer, claim for credit and counterclaim, the complainant denies that the Fleet Corporation, on its own responsibility, employed Perley Morse and Company to audit certain accounts of the defendant. Complainant admits that the Fleet Corporation, acting as agent of the complainant, employed Perley Morse and Company to make a reaudit of the accounts of the defendant on certain contracts which required the defendant to establish and keep suitable and accurate accounts and records. Complainant avers that the defendant in violation of the provisions of the contracts under which the complainant, through its agent, the Fleet Corporation, was to have free access for the purpose of auditing the accounts refused to permit the said Perley Morse and Company to enter the yards or have access to the books and records. Complainant further avers that defendant denied the force of the said Perley Morse and Company access to the books and records for a period of approximately three months and that complainant paid to the said Perley Morse and Company the sum of $90,019.55 for the period while the force of the said Perley Morse and Company was prevented from having access to the books and records of the defendant. Complainant avers that the defendant was duly notified that the cost of the auditing force of the

said Perley Morse and Company would be charged against the defendant for the period of time while the said force was prevented from having access to the books and records of the defendant. Complainant denies that the Fleet Corporation, either on its own behalf or as agent of the complainant, arbitrarily and without any agreement or liability of defendant deducted $90,019.55 from an undisputed balance due from the Fleet Corporation or the complainant to the defendant. Complainant avers that by its conduct in refusing access of the auditors to its books and records the defendant became liable for the amount which it was necessary for the complainant to pay for the services of the auditors. Complainant denies that any sum whatsoever is due and owing from the Fleet Corporation or the complainant to the defendant on account of the propelling machinery mentioned in said paragraph Ninety-third, and complainant avers that, on the contrary, the Fleet Corporation, as agent of the complainant, has largely overpaid defendant from the funds of the complainant on account of said propelling machinery.

Forty-third. Replying to paragraph Ninety-fourth of defendant's answer, claim for credit and counterclaim, the complainant admits the allegations therein contained, except that complainant avers that each and every act therein alleged as an act of the Fleet Corporation was an act of the complainant through the agency of the Fleet Corporation and denies that there became due from the Fleet Corporation the sum of $2,570.00, but complainant admits that the defendant is entitled to a credit in the amount of $2,570.00 from the complain-

ant on account of the transactions mentioned in said paragraph.

Forty-fourth. Replying to paragraph Ninety-fifth of defendant's answer, claim for credit and counterclaim, the complainant admits that Charles M. Schwab became Director General of the Fleet Corporation at the instance of the United States Shipping Board. Complainant has no knowledge or information as to the other averments contained in said paragraph.

Forty-fifth. Replying to paragraph Ninety-sixth of defendant's answer, claim for credit and counterclaim, complainant admits that Charles M. Schwab, shortly after taking office as Director General of the Fleet Corporation, wrote and forwarded to the President and Trustees of the Fleet Corporation the letter set forth in said paragraph. Complainant avers that said letter did not relieve the said Charles M. Schwab as an officer of the Fleet Corporation, which was then and had been for many months prior thereto the direct agent of the United States, from the responsibility of supervising and directing the work of the Fleet Corporation as such agent or from his obligation to see that the interests of the Government were properly protected.

Forty-Sixth. Paragraph Ninety-seventh admitted.

Forty-seventh. Replying to paragraph Ninety-eighth of defendant's answer, claim for credit and counterclaim, the complainant denies that the understanding and agreement alleged in said paragraph ever existed. Complainant avers that at no time was there any understanding and agreement between

the said Charles M. Schwab and the said Fleet Corporation, as agent of the complainant or otherwise, to the effect that the said Charles M. Schwab should be relieved of the performance of his duty with respect to the relations between the Fleet Corporation and the defendant. Complainant further avers that the said Charles M. Schwab did take part in said relations between the defendant and the Fleet Corporation, as agent of the United States.

Forty-eighth. Replying to paragraph Ninety-ninth of defendant's answer, claim for credit and counterclaim, the complainant denies that there were any contracts whatever between the Fleet Corporation, as principal, and the defendant, and avers that all the contracts mentioned in said paragraph were between the complainant and the defendant. The complainant denies that all of the contracts listed in Article XXIX of the bill of complaint and in Exhibit 1 attached to the defendant's answer, with the exception of contracts numbered 299, 300, 301, 312, 313, 314, 340, and 465 were agreed upon and signed before Mr. Schwab entered upon his duties as Director General of the Fleet Corporation. Complainant avers that contracts numbered 230, 299, 300, 301, 312, 313, 314, 340, and 465 were signed after Mr. Schwab entered upon his duties as Director General of the Fleet Corporation. The complainant has no knowledge or information concerning the allegation in said paragraph that Charles M. Schwab had nothing to do with the negotiation of contract 465 as in the case of all such other contracts.

Forty-ninth. Replying to paragraph One Hundredth of defendant's answer, claim for credit and

counterclaim, the complainant denies each and every allegation therein contained. Complainant avers that the vessels mentioned therein were vessels of a standard type which the defendant and its predecessors had been building for many years and that the defendant had adequate information upon which to base approximate estimates of what the ultimate cost of such vessels would be.

Fiftieth. Replying to paragraph One Hundred First of defendant's answer, claim for credit and counterclaim, complainant admits that the defendant prepared and submitted to the Fleet Corporation statements of accounts but denies that such statements of accounts showed any balance due and unpaid by the Fleet Corporation on account of such vessels and special improvements and plant facilities. Complainant avers that said statements of accounts were statements which purported to set up balances on the relationships between defendant and the complainant, acting through the Fleet Corporation as its agent. The complainant denies that the defendant cooperated with and offered every assistance to the Fleet Corporation in making the audits referred to in said paragraph. Complainant avers that the defendant repeatedly placed obstacles in the way of the completion of such audits.

Fifty-first. Replying to paragraph One Hundred Second of defendant's answer, claim for credit and counterclaim, the complainant denies that the Fleet Corporation, either as principal or as agent of the United States, referred all the claims of the defendant to the Honorable William Marshall Bullitt, one of its special counsel, for consideration and report thereon. Complainant avers that said Bullitt

was requested by the Chairman of the United States Shipping Board to examine into the claims of defendant against the complainant and to give his opinion thereon. Complainant admits that the defendant presented certain claims to said Bullitt and made various offers of compromise, but denies that any such offers were for compromises with the Fleet Corporation.

Fifty-second. Replying to paragraph One Hundred Third of defendant's answer, claim for credit and counterclaim, the complainant avers that the said Bullitt made a report upon certain claims made by the defendant and upon certain claims made by the complainant, but that all the claims of either the defendant or the complainant were not presented to the said Bullitt and that as to such unpresented claims he made no report whatever. The complainant further avers that the report of the said Bullitt was submitted to the United States Shipping Board, which was then empowered by law to hear, adjust, determine, and settle all claims arising out of the transactions mentioned in the complaint and defendant's answer.

Fifty-third. Replying to paragraph One Hundred Fourth of defendant's answer, claim for credit and counterclaim, the complainant denies that the Fleet Corporation ignored the report of said Bullitt, and complainant avers that said report was never made to the Fleet Corporation in any capacity, but was a report made to the Chairman of the United States Shipping Board. Complainant avers that the United States Shipping Board notified the defendant that the said United States Shipping Board would hold a hearing upon the recommendations of

the Standing Committee on Claims of the United States Shipping Board, and the defendant was invited to be present at the said hearing. Complainant avers that defendant did appear by Charles M. Schwab, Chairman of the Board of Directors of the defendant, by the President of the defendant corporation, and other high officers of the defendant corporation, and such representatives of defendant had every opportunity to and did present at length arguments in favor of their claims and arguments against the counterclaims of the complainant. Complainant denies that the defendant was notified that the United States Shipping Board had approved the recommendation of the Standing Committee on Claims of the Fleet Corporation. Complainant further denies that such a committee ever existed. Complainant admits that the defendant was notified that the United States Shipping Board had approved the recommendation of the Standing Committee on Claims of the United States Shipping Board to the effect that the complainant did not owe the defendant anything on account of the transactions involved in the claims, but on the contrary the defendant owed the United States upwards of $11,000,000.00.

Fifty-fourth. Replying to paragraph One Hundred Fifth of defendant's answer, claim for credit and counterclaim, the complainant denies each and every averment in said paragraph contained.

Fifty-fifth. Replying to paragraph One Hundred Sixth of defendant's answer, claim for credit and counterclaim, complainant avers that said paragraph contains incorrect and improper conclusions

of law which the complainant deems unnecessary to further refute in this reply.

Fifty-sixth. Replying to paragraph One Hundred Seventh of defendant's answer, claim for credit and counterclaim, complainant repeats and reaffirms every averment heretofore contained in this reply with the same force and effect as if herein again averred in full. Further replying to said paragraph, complainant denies that the defendant is entitled to any other or further credits than those set forth in column 16 of Exhibit A, hereto attached, and those set forth in column 12 of Exhibit B, hereto attached, except that the defendant is entitled to a credit of $258,048.58 on account of fees for profit on the construction of the Liberty plant and a credit of the sum of $2,570.00 on account of the restoration of land formerly used as a tennis court. Complainant further avers that the credits herein admitted do not represent sums which the defendant is entitled to receive, but only represent credits which should be allowed against the payments made by the complainant to the defendant as shown in column 17 of Exhibit A, hereto attached, and column 13 of Exhibit B, hereto attached, and in paragraph Second of this reply and against other overpayments and charges due from the defendant to the complainant.

Fifty-seventh. Replying to paragraph One Hundred Eighth of defendant's answer, claim for credit and counterclaim, the complainant repeats and reavers every averment heretofore contained in this reply with the same force and effect as if herein again averred in full. Complainant denies that there is any sum whatever due and owing from the com-

plainant or the Fleet Corporation to the defendant and denies that the defendant should recover of the complainant the sum of $8,839,820.80, or any other sum whatever.

Special Reply and Defense to Defendant's Claim for Credit and Counterclaim

Fifty-eighth. Not waiving but insisting upon all the averments contained in the foregoing reply, but in addition thereto and as a special reply, the complainant avers that the defendant has not presented its claim for credit or counterclaim to the accounting officers of the Treasury in accordance with Section 951 of the Revised Statutes for their examination and the said accounting officers have neither allowed or disallowed said claim in whole or in part and defendant has not pleaded and it is not the fact that the defendant is in possession of vouchers not before in its power to procure or that defendant was prevented from exhibiting a claim for such credit at the Treasury by absence from the United States or by some unavoidable accident. The complainant therefore avers that the defendant is not entitled to plead any of the credits claimed by the defendant in its answer, claim for credit, and counterclaim.

Complainant having fully replied to all the averments contained in the answer, claim for credit and counterclaim, prays judgment in accordance with the prayer contained in the bill of complaint.

GEORGE W. COLE,
United States Attorney for the Eastern District of Pennsylvania.

HENRY P. BROWN,
Special Assistant to the Attorney General.
JOSEPH J. BROWN,
Special Assistant to the Attorney General.
JAMES TALBERT,
Special Assistant to the Attorney General.
CHAUNCEY G. PARKER,
General Counsel, United States Shipping Board.
RALPH H. HALLETT,
Assistant Counsel, United States Shipping Board.

EXHIBIT A

STATEMENT SHOWING CREDITS TO SHIPBUILDER, PAYMENTS TO SHIPBUILDER, AND RECOVERABLE OVERPAYMENTS TO SHIPBUILDER ON ACCOUNT OF CONSTRUCTION COST, PROFIT, AND HALF SAVINGS ON ALL DIRECT CONTRACT SHIPS, BOTH COMPLETED AND CANCELED

Cause of action	Contract No.	Shipyard plant	CREDITS AND PAYMENTS FOR COST					CREDITS AND PAYMENTS FOR PROFIT					"HALF SAVINGS"		SUMMARY TOTALS		
			Credits for construction cost			Payments to shipbuilder account of cost	Recoverable overpayments to shipbuilder on cost	Net cost—basis of profit	Percentage of cost conceded as profit	Credits to shipbuilder for profit	Payments to shipbuilder account of profit	Recoverable overpayments to shipbuilder on profit	Credit to shipbuilder	Recoverable payments to shipbuilder on "half savings"	Grand total credits to shipbuilder	Grand total payments to shipbuilder	Grand total recoverable overpayments to shipbuilder
			Net cost	Surplus materials	Total cost												
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)	(16)	(17)	(18)
1st	177	Union	$22,412,491.57	$53,859.63	$22,466,351.20	$22,792,960.96	$326,609.76	$22,412,491.57	10%	$2,241,249.16	$2,268,000.00	$26,750.84	0.00	$1,980,242.43	$24,707,600.36	$27,041,203.39	$2,333,603.03
2nd	178	Harlan	9,757,562.79	34,452.84	9,792,015.63	9,803,700.22	11,684.59	9,757,562.79	10%	975,756.28	709,500.00	*266,256.28*	.00	113,610.02	10,767,771.91	10,686,810.24	*80,961.67*
3rd	179	Sparrows Pt	5,552,545.07	3,785.34	5,556,330.41	5,657,180.58	100,850.17	5,552,545.07	10%	555,254.51	539,998.90	*15,255.61*	.00	515,223.37	6,111,584.92	6,712,408.85	600,823.93
4th	182	Sparrows Pt	11,195,659.89	152,598.37	11,348,258.26	11,495,435.22	147,176.95	11,195,659.89	10%	1,119,565.99	800,000.00	*319,565.99*	.00	.00	12,467,824.25	12,295,435.22	*172,389.03*
5th	183	Fore River	5,287,865.43	19,965.44	5,307,830.87	5,368,867.81	61,036.94	5,287,865.43	10%	528,786.54	499,500.00	*29,286.54*	.00	402,056.25	5,816,617.41	6,270,424.06	453,806.65
Not in claim	184	Moore	6,086,293.48	54,225.65	6,140,519.13	6,543,048.69	402,529.56	6,086,293.48	10%	608,629.35	656,969.92	48,280.57	.00	470,053.70	6,749,148.48	7,670,012.31	920,863.83
6th	191	Union	6,345,388.74	3,869.37	6,349,258.11	6,405,743.11	56,483.00	6,345,388.74	10%	634,538.87	766,260.00	131,721.13	.00	1,100,000.00	6,983,796.98	8,272,001.11	1,288,204.13
7th	196	Sparrows Pt	1,123,782.08	.00	1,123,782.08	1,142,822.60	19,040.52	1,123,782.08	10%	112,378.21	115,400.56	3,022.35	.00	112,656.84	1,236,460.29	1,370,880.00	134,719.71
8th	226	Sparrows Pt	10,891,429.05	13,118.77	10,904,547.82	11,149,226.76	244,778.94	10,891,429.05	10%	1,089,142.91	1,057,500.00	*31,642.91*	.00	837,579.61	11,993,690.73	13,044,405.37	1,050,715.64
9th	230	Union	3,192,236.09	26,433.82	3,218,669.91	3,248,727.48	30,057.57	3,192,236.09	10%	319,223.61	373,500.00	54,276.39	.00	455,000.00	3,537,893.52	4,077,227.48	539,333.96
10th	299	Fore River	4,848,595.35	18,516.22	4,867,111.57	4,897,000.21	29,938.64	4,848,595.35	10%	484,859.54	499,500.00	14,640.46	.00	479,402.75	5,351,971.11	5,877,952.96	523,981.85
11th	300	Sparrows Pt	5,122,587.87	2,465.36	5,125,053.23	5,166,180.02	41,126.79	5,122,587.87	10%	512,258.79	540,000.00	27,741.21	00	667,660.53	5,637,312.02	6,373,840.55	736,528.53
12th	301	Union*	15,274,468.69	70,363.39	15,344,832.08	15,360,150.17	15,318.09	15,274,468.69	10%	1,527,446.87	1,694,250.00	166,803.13	.00	1,744,757.57	16,872,278.95	18,799,157.74	1,926,878.79
12th	301	Union**	699,746.46	.00	699,746.46	814,685.34	114,938.88	699,746.46	10%	69,974.65	26,604.85	*43,369.80*	.00	.00	769,721.11	841,290.19	71,569.08
Not in claim	312	Sparrows Pt.**	313,594.89	.00	313,594.89	392,387.49	78,792.60	313,594.89	10%	31,359.49	28,471.31	*2,888.18*	.00	.00	344,954.38	420,858.80	75,904.42
13th	313	Moore**	488,192.25	.00	488,192.25	431,564.19	*56,628.06*	488,192.25	10%	48,819.22	21,402.99	*27,416.23*	.00	.00	537,011.47	452,967.18	*84,044.29*
14th	314	Harlan	13,021,970.30	48,130.79	13,070,101.09	13,172,512.23	102,411.14	13,021,970.30	10%	1,302,197.03	1,038,577.35	*263,619.68*	.00	135,389.98	14,372,298.12	14,347,479.56	*24,818.56*
15th	310	Liberty**	375,000.00	.00	375,000.00	375,000.00	.00	375,000.00	7½%	28,125.00	.00	*28,125.00*	.00	.00	403,125.00	375,000.00	*28,125.00*
16th	465	Sparrows Pt.*	15,071,907.16	152,598.36	15,224,505.52	15,240,199.30	15,693.78	15,071,907.16	10%	1,507,190.72	864,000.00	*644,190.72*	.00	.00	16,731,695.24	16,104,199.30	*627,496.94*
16th	465	Sparrows Pt.**	2,888,648.70	.00	2,888,648.70	2,669,328.70	*219,320.00*	2,888,648.70	7.6923%	222,203.52	238,112.40	15,908.88	.00	.00	3,110,852.22	2,907,441.10	*203,411.12*
TOTALS			139,949,365.86	651,383.35	140,600,749.21	142,126,875.08	1,522,525.87	139,949,965.86		13,918,960.26	12,797,488.28	*1,121,471.98*	.00	9,014,633.05	154,523,309.47	153,938,996.41	9,415,686.94

*Completed ships. **Canceled ships.

NOTE.—Figures in *italics* represent underpayments to shipbuilder.

COMPLAINANT'S REPLY TO THE CLAIM FOR CREDIT AND COUNTERCLAIM OF THE DEFENDANT, BETHLEHEM STEEL COMPANY.

(Filed April 15, 1929)

Comes now the complainant, the United States of America, by George W. Coles, United States Attorney for the Eastern District of Pennsylvania, its Solicitor, and for its reply to the claim for credit and counterclaim of the defendant, Bethlehem Steel Company, states as follows:

First. Complainant avers that the name of the United States Shipping Board Emergency Fleet Corporation was changed to United States Shipping Board Merchant Fleet Corporation by Act of Congress approved February 11, 1927, known as Independent Offices Appropriation Act 1928. Hereinafter in this reply the United States Shipping Board Merchant Fleet Corporation will be referred to as the Fleet Corporation.

Second. Replying to paragraph Fifty-fourth of defendant's answer, claim for credit and counterclaim, complainant admits the averments therein contained.

Third. Replying to paragraph Fifty-fifth of defendant's answer, claim for credit and counterclaim, the complainant denies that on or about October 10, 1917, the defendant and the Fleet Corporation, acting as principal, entered into the contracts in writing referred to; and complainant further

denies that the Fleet Corporation, on its own behalf, made any agreement or agreements whatever concerning the completion of said ships, or otherwise. Complainant further denies that the Fleet Corporation assumed or agreed to assume any liability whatever in connection with said contracts or said ships. The complainant avers that the ships referred to in said paragraph were requisitioned by the United States, acting through the Fleet Corporation as its agent, on August 3, 1917, and that the President of the United States, acting through the Fleet Corporation as agent, ordered the completion of said vessels. Complainant further avers that a contract for the completion of said vessels was entered into between the defendant and the United States of America, acting through the Fleet Corporation as its agent, and not otherwise. Complainant admits that the defendant agreed on final acceptance of each such vessels to give a bill of sale to the United States in satisfactory form conveying all the right, title, and interest of the shipbuilder in such vessels to the United States. The complainant avers that the contract entered into between the defendant and the United States provided that for the work of completion the shipbuilders should be paid amounts equal to the payments set forth in the original contracts and not then paid. Complainant further denies that the Fleet Corporation agreed, upon completion of such vessels, a complete audit of the items which should go to make up the price of such vessels would be made by the Fleet Corporation and that thereupon the balance determined to be due on such vessels should become immediately due and payable. Complainant avers that no such agreement was made by the Fleet Corporation either in

its own behalf or as an agent of the United States, except that as agent of the United States the Fleet Corporation did agree to make an audit of the cost of the ships that were to be completed on the cost-plus basis.

Complainant denies that each and every action taken by the Fleet Corporation under such contract was taken by it as principal and as the real party in interest thereunder, but avers that each and every action of the Fleet Corporation under such contract and every transaction connected with the building of said ships was taken as the agent of the United States of America pursuant to the Emergency Shipping Fund Provision of the Urgent Deficiencies Appropriation Act of June 15, 1917, and the Executive Order of the President of the United States designating the Fleet Corporation as the agent of the United States for the purpose of requisitioning ships and securing the completion thereof. Complainant further denies that defendant dealt with the Fleet Corporation as principal, but avers that defendant at all times dealt with the Fleet Corporation solely as an agent of the United States.

Fourth. Replying to paragraph Fifty-sixth of defendant's answer, claim for credit and counterclaim, complainant denies that the contract referred to was a contract between defendant and the Fleet Corporation, or that the Fleet Corporation, as principal, gave any approval to the completion of the vessels by the Bethlehem Shipbuilding Corporation, Ltd., but avers that such approval was given by the Fleet Corporation as agent of complainant; and avers that the contract referred to

was a contract between defendant and the United States of America represented by the Fleet Corporation.

Fifth: Replying to paragraph Fifty-seventh of defendant's answer, claim for credit and counterclaim, the complainant denies each and every allegation contained in said paragraph and refers to the allegations contained in paragraphs Fortieth to Forty-eighth Inclusive of Complainant's Complaint, which paragraphs are specifically herein reaverred. Complainant denies that the aggregate of the bonuses paid to the workmen multiplied by the alleged applicable overtime coefficient amounted the sums set forth in Column K of defendant's Exhibit 3, and avers that the sums set forth in said Column K are inconsistent with the sums stipulated and agreed to by both parties as correct and inconsistent with the sums set forth in Exhibit 2 attached to the reply of the Bethlehem Shipbuilding Corporation, Ltd., in its suit against the Fleet Corporation, No. 11970, in this court, and which said Exhibit 2 correctly sets forth the combined sums of the overtime bonus paid to the workmen and the excess over the bonus which was paid to the defendant by the Fleet Corporation, as agent of the United States, without consideration and without any warrant in fact or in law. Complainant avers that the amounts paid by Fleet Corporation on behalf of Complainant to defendant on account of overtime bonus paid to workmen are correctly set forth in Column 6 of Exhibit A, hereto attached.

Sixth. Replying to paragraph Fifty-eighth of defendant's answer, claim for credit and counter-

claim, the complainant denies that the Fleet Corporation, as principal, entered into the agreement mentioned in said paragraph. Complainant avers that the defendant and the complainant, the United States of America acting through its agent, the Fleet Corporation, entered into an agreement by which the defendant should be reimbursed for certain payments made to foremen, assistant foremen, leading men, and other heads of departments in order to expedite the completion of the hulls mentioned in said paragraph. Complainant admits that the amount of such payments to which the defendant is entitled as a credit is correctly set forth in column L of Exhibit 1, attached to defendant's answer.

Seventh. Replying to paragraph Fifty-ninth of defendant's answer, claim for credit and counterclaim, the complainant denies that the Fleet Corporation, as principal, gave any orders or directions to the defendant concerning additions to and omissions from the plans and specifications for the vessels mentioned in said paragraph. Complainant avers that such orders and directions were given by the complainant acting through the Fleet Corporation as agent. Complainant denies that the net cost of such additions and omissions is as set forth in column J of Exhibit 1, attached to defendant's answer, but avers that the proper and correct net cost of such additions and omissions is as set forth in column 5 of Exhibit A, hereto attached.

Eighth. Replying to paragraph Sixtieth of defendant's answer, claim for credit and counterclaim, the complainant denies that the $0.60 per deadweight ton provision therein referred to is

legally binding upon the complainant or its agent, the Fleet Corporation, in that it provides for excessive, unreasonable, and unconscionable profits for which there is no consideration, and for the further reason that the said provision was superseded by an agreement under which the complainant, acting through its agent, the Fleet Corporation, agreed with the defendant to reimburse, and did reimburse the defendant for the actual additional cost due to increases in wages rates over the base rates specified in the contract and defendant agreed to accept and did accept said reimbursement, and defendant is entitled to receive from complainant only such amount as represents the actual increase in wages paid by it over and above the amount of wages which would have been paid by it at the rates in force at the date of said contracts increased by 10 per cent, which increase amounts to the sums set forth in column 8, lines 16, 17, 20, and 21 of Exhibit A, hereto attached.

Ninth. Replying to paragraph Sixty-first of defendant's answer, claim for credit and counterclaim, the complainant denies that there became due from the Fleet Corporation to the defendant on account of the matters alleged in said paragraph any sum whatever. Complainant admits that there became due from the complainant to the defendant credits equal to the amounts set forth in column N of Exhibit 1, attached to defendant's answer.

Tenth. Replying to paragraph Sixty-second of defendant's answer, claim for credit and counterclaim the complainant denies that the defendant and the Bethlehem Shipbuilding Corporation, Ltd.,

duly performed all the terms and conditions of all the contracts for said vessels in that defendant and the Bethlehem Shipbuilding Corporation, Ltd., did not keep accurately the costs of the construction of certain of said vessels. Complainant further denies that any of said vessels was completed in accordance with the orders of the Fleet Corporation as principal. Complainant denies that any of said vessels were ever delivered to or accepted by the Fleet Corporation as principal. Complainant avers that such of the vessels as were completed were delivered to and accepted by the United States of America.

Eleventh. Replying to paragraph Sixty-third of defendant's answer, claim for credit and counterclaim, the complainant denies that the Fleet Corporation accepted any of the vessels mentioned in said paragraph. Complainant avers that the vessels were accepted by the United States and for the United States, through the agency of the Fleet Corporation, and receipted for in that manner. Complainant denies that the Fleet Corporation found that any amount whatever had become payable by it to the defendant or the Bethlehem Shipbuilding Corporation, Ltd., on account of the construction of such vessels, and the complainant further denies that the amounts which the Fleet Corporation found on audit should be credited to the defendant were as set forth in columns I, J, K, L, M, N, O, P, and Q of Exhibit 1, attached to defendant's answer. Complainant avers that the amounts which the Fleet Corporation found should be credited by its principal, the complainant, to the Bethlehem Shipbuilding Corporation, Ltd., on account of the con-

struction of said vessels are as set forth in columns 4, 5, 6, 7, 8, 9, 10, 11, and 12 of Exhibit A, hereto attached.

Twelfth. Replying to paragraph Sixty-fourth of defendant's answer, claim for credit and counterclaim, complainant denies that the amounts paid to the defendant and the Bethlehem Shipbuilding Corporation, Ltd., by the former owners and the Fleet Corporation, are as set forth in column R of Exhibit 1, attached to defendant's answer. Complainant avers that the amounts which were paid to the defendant and the Bethlehem Shipbuilding Corporation, Ltd., by the former owners and by the Fleet Corporation, acting as agent of the complainant, and from the funds of the complainant are as set forth in column 13 of Exhibit A, hereto attached.

Thirteenth. Replying to paragraph Sixty-fifth of defendant's answer, claim for credit and counterclaim the complainant admits that the Fleet Corporation has failed and refused to pay the amounts set forth in column S of Exhibit 1, attached to defendant's answer. Complainant avers that none of the amounts set forth in column S of such exhibit is due from or payable by the Fleet Corporation to the defendant or to the Bethlehem Shipbuilding Corporation, Ltd., and complainant further avers that the amounts set forth in said column S of such Exhibit 1 do not correctly represent balances in the accounts between the complainant and the defendant and the Bethlehem Shipbuilding Corporation, Ltd. Complainant avers that through mistakes of fact and mistakes of law the Fleet Corporation, as agent of the complainant, has largely overpaid

the Bethlehem Shipbuilding Corporation, Ltd., on account of requisitioned ships, from moneys of the claimant to an extent the aggregate of which is $1,316,631.07, as shown in column 14 of Exhibit A, hereto attached.

Fourteenth. Replying to paragraph Seventy-first of defendant's answer, claim for credit and counterclaim, complainant repeats and reavers every averment and denial heretofore contained in paragraphs Second to Thirteenth, inclusive, of this reply with the same force and effect as if herein again averred or denied in full. Further replying to said paragraph, complainant denies that the defendant or the Bethlehem Shipbuilding Corporation, Ltd., is entitled to any other or further credits on account of the transactions set forth in defendant's answer than those set forth in column 12 of Exhibit A, hereto attached. Complainant further avers that the credits herein admitted do not represent sums which the defendant or the Bethlehem Shipbuilding Corporation, Ltd., is entitled to receive, but only represent credits which should be allowed against the payments made by the complainant to the defendant and to the Bethlehem Shipbuilding Corporation, Ltd., as shown in column 13 of Exhibit A, hereto attached.

Fifteenth. Replying to paragraph Seventy-second of defendant's answer, claim for credit and counterclaim, the complainant repeats and reavers the denials and averments contained in paragraphs Second to Thirteenth, inclusive, of this reply with the same force and effect as if herein again denied or averred in full. Complainant denies that there

is any sum whatever due and owing from the complainant or from the Fleet Corporation to the defendant or to the Bethlehem Shipbuilding Corporation, Ltd., and denies that either the defendant or the Bethlehem Shipbuilding Corporation, Ltd., should recover from the complainant the sum of $852,401.35 or any other sum whatever.

Special Reply and Defense to Defendant's Answer, Claim for Credit and Counterclaim

Sixteenth. Not waiving, but insisting upon the averments and denials contained in the foregoing reply, but in addition thereto and as a special reply the complainant avers that the defendant has not presented its claim for credit and counterclaim to the accounting officers of the Treasury of the United States in accordance with Section 951 of the Revised Statutes of the United States for their examination and the said accounting officers have neither allowed nor disallowed said claim in whole or in part, and defendant has not pleaded and it is not the fact that the defendant is in possession of vouchers not before in its power to procure or that defendant was prevented from exhibiting a claim for such credit at the Treasury of the United States by absence from the United States or by any unavoidable accident. The complainant therefore avers that the defendant is not entitled to plead any of the credits claimed by the defendant in its answer, claim for credit and counterclaim.

Complainant having fully replied to all the averments contained in the answer, claim for credit and

counterclaim, prays judgment in accordance with the prayer contained in the bill of complaint.

GEORGE W. COLES,
United States Attorney for the Eastern District of Pennsylvania.

HENRY P. BROWN,
Special Assistant to the Attorney General.
JOSEPH J. BROWN,
Special Assistant to the Attorney General.
JAMES TALBERT,
Special Assistant to the Attorney General.
CHAUNCEY G. PARKER,
General Counsel, United States Shipping Board.
RALPH H. HALLETT,
Assistant Counsel, United States Shipping Board.

COMPLAINANT'S REPLY TO THE CLAIM FOR CREDIT OF THE DEFENDANT, FORE RIVER SHIPBUILDING CORPORATION.

(Filed April 15, 1929)

Comes now the complainant, the United States of America, by George W. Coles, United States Attorney for the Eastern District of Pennsylvania, its Solicitor, and for its reply to the claim for credit of the defendant, Fore River Shipbuilding Corporation, states as follows:

First. Complainant avers that the name of the United States Shipping Board Emergency Fleet Corporation was changed to United States Shipping Board Merchant Fleet Corporation by Act of Congress approved February 11, 1927, known as Independent Offices Appropriation Act, 1928. Hereinafter in the reply the United States Shipping Board Merchant Fleet Corporation will be referred to as the Fleet Corporation.

Second. Replying to paragraph Fifty-fourth of defendant's answer and claim for credit, complainant admits the averments therein contained.

Third. Replying to paragraph Fifty-fifth of defendant's answer and claim for credit, the complainant denies that on or about September 10, 1917, the defendant and the Fleet Corporation, acting as principal, entered into the contract in writing referred to; and complainant further denies that the Fleet Corporation, on its own behalf, made

any agreement or agreements whatever concerning the completion of said ships, or otherwise. Complainant further denies that the Fleet Corporation assumed or agreed to assume any liability whatever in connection with said contracts or said ships. The complainant avers that the ships referred to in said paragraph were requisitioned by the United States, acting through the Fleet Corporation as its agent, on August 3, 1917, and that the President of the United States, acting through the Fleet Corporation as agent, ordered the completion of said vessels. Complainant further avers that contracts for the completion of said vessels were entered into between the defendant and the United States of America, acting through the Fleet Corporation as its agent, and not otherwise. Complainant admits that the defendant agreed on final acceptance of each such vessel to give a bill of sale to the United States in satisfactory form conveying all the right, title, and interest of the shipbuilder in such vessel to the United States. The complainant avers that the contracts entered into between the defendant and the United States provided that for the work of completion the shipbuilders should be paid amounts equal to the payments set forth in the original contracts and not then paid. Complainant further denies that the Fleet Corporation agreed, upon completion of such vessels, a complete audit of the items which should go to make up the price of such vessels would be made by the Fleet Corporation and that thereupon the balance determined to be due on such vessels should become immediately due and payable. Complainant avers that no such agreement was made by the Fleet Corporation either in its own behalf or as an agent of the United

States, except that as agent of the United States the Fleet Corporation did agree to make an audit of the cost of the ships that were to be completed on a cost-plus basis.

Complainant denies that each and every action taken by the Fleet Corporation under such contracts was taken by it as principal and as the real party in interest thereunder, but avers that each and every action of the Fleet Corporation under such contracts and in every transaction connected with the building of said ships was taken as the agent of the United States of America pursuant to the Emergency Shipping Fund Provision of the Urgent Deficiencies Appropriation Act of June 15, 1917, and the Executive Order of the President of the United States designating the Fleet Corporation as the agent of the United States for the purpose of requisitioning ships and securing the completion thereof. Complainant further denies that defendant dealt with the Fleet Corporation as principal, but avers that defendant at all times dealt with the Fleet Corporation solely as an agent of the United States.

Fourth. Replying to paragraph Fifty-sixth of defendant's answer and claim for credit, complainant denies that the contract referred to was a contract between defendant and the Fleet Corporation, or that the Fleet Corporation, as principal, gave any approval to the completion of the vessels by the Bethlehem Shipbuilding Corporation, Ltd., but avers that such approval was given by the Fleet Corporation as agent of complainant, and avers that the contract referred to was a contract between de-

fendant and the United States of America represented by the Fleet Corporation.

Fifth. Replying to paragraph Fifty-seventh of defendant's answer and claim for credit, the complainant denies that the Fleet Corporation acted in any capacity except as agent of the complainant in entering into any of the agreements mentioned in said paragraph.

Sixth. Replying to paragraph Fifty-eighth of defendant's answer and claim for credit, the complainant denies each and every allegation contained in said paragraph and refers to the allegations contained in paragraphs Fortieth to Forty-eighth, Inclusive, of Complainant's Complaint, which paragraphs are specifically herein reaverred. Complainant denies that the aggregate of the bonuses paid to the workmen multiplied by the alleged applicable over time coefficient amounted to the sums set forth in Column K of defendant's Exhibit 3, and avers that the sums set forth in said Column K are inconsistent with the sums stipulated and agreed to by both parties as correct, and inconsistent with the sum set forth in Exhibit 2 attached to the reply of the Bethlehem Shipbuilding Corporation, Ltd., in its suit against the Fleet Corporation, No. 11970, in this court, and which said Exhibit 2 correctly sets forth the combined sums of the overtime bonus paid to the workmen, and the excess over the bonus which was paid to the defendant by the Fleet Corporation, as agent of the United States, without consideration and without any warrant in fact or in law. Complainant avers that the amounts paid by Fleet Corporation on behalf of Complainant to defendant on account of overtime bonus paid to

workmen are correctly set forth in Column 6 of Exhibit A, hereto attached.

Seventh. Replying to paragraph Fifty-ninth of defendant's answer and claim for credit, the complainant denies that the Fleet Corporation, as principal, gave any orders or directions to the defendant concerning additions to and omissions from the plans and specifications for the vessels mentioned in said paragraph. Complainant avers that such orders and directions were given by the complainant acting through the Fleet Corporation as agent. Complainant denies that the net cost of such additions and omissions is as set forth in column J of Exhibit 1, attached to defendant's answer, but avers that the proper and correct net cost of such additions and omissions is as set forth in column 5 of Exhibit A, hereto attached.

Eighth. Replying to paragraph Sixtieth of defendant's answer and claim for credit, the complainant denies that there became due from the Fleet Corporation to the defendant on account of the matters alleged in said paragraph any sum whatever. Complainant admits that there became due from the complainant to the defendant credits equal to the amounts set forth in column N of Exhibit 1, attached to defendant's answer.

Ninth. Replying to paragraph Sixty-first of defendant's answer and claim for credit, the complainant denies that the Fleet Corporation, as principal, gave any directions to the Bethlehem Shipbuilding Corporation, Ltd., whatever concerning rates of wages to be paid or made any agreements whatever to reimburse the Bethlehem Shipbuilding Corpora-

tion, Ltd., for the increased costs of labor incurred by the increases in wages, but avers that the directions and agreements referred to were made by the complainant acting through its agent, the Fleet Corporation. The complainant denies that the increased cost of labor actually incurred by the Bethlehem Shipbuilding Corporation, Ltd., in the construction of the hulls mentioned in said paragraph were as set forth in column M of Exhibit 1, attached to defendant's answer. Complainant avers that the increased costs of labor actually incurred by the Bethlehem Shipbuilding Corporation, Ltd., for the construction of the hulls mentioned in said paragraph are as set forth in column 8 of Exhibit A, hereto attached.

Tenth. Replying to paragraph Sixty-second of defendant's answer and claim for credit, the complainant denies that the defendant and the Bethlehem Shipbuilding Corporation, Ltd., duly performed all the terms and conditions of all the contracts for said vessels, in that defendant and the Bethlehem Shipbuilding Corporation, Ltd., did not keep accurately the costs of the construction of certain of said vessels. Complainant further denies that any of the said vessels were completed in accordance with the orders of the Fleet Corporation as principal. Complainant denies that any of said vessels were ever delivered to or accepted by the Fleet Corporation as principal. Complainant avers that such of the vessels as were completed were delivered to and accepted by the United States of America.

Eleventh. Replying to paragraph Sixty-third of defendant's answer and claim for credit, the com-

plainant avers that said materials referred to were obtained for the Bethlehem Shipbuilding Corporation, Ltd., and the defendant by the Fleet Corporation, acting as an agent of the United States, and by Luckenbach, the former owner, from other contractors, the cost of which aggregates $233,600.00, which was paid by said Luckenbach and the complainant, acting through the Fleet Corporation, direct to such contractors. Complainant denies that the total actual cost of constructing hulls Nos. 297 and 298, determined in accordance with the provisions of such contracts, was $5,225,339.31, but avers that such cost was $4,934,702.16. Complainant denies that the said sum of $233,600.00 spent for materials by Luckenbach and by the complainant constituted any part of the cost of said hulls on which the defendant was entitled to profit.

Twelfth. Replying to paragraph Sixty-fourth of defendant's answer and claim for credit, complainant denies that the Bethlehem Shipbuilding Corporation, Ltd., purchased from the Fleet Corporation, as principal, any materials whatever. Complainant avers that the Bethlehem Shipbuilding Corporation, Ltd., purchased such materials in the sum of $32,196.42 from the complainant, and that the Bethlehem Shipbuilding Corporation, Ltd., agreed that for the purpose of determining profit payable to the Bethlehem Shipbuilding Corporation, Ltd., there should be deducted from the total cost of constructing the vessels the sum of $32,196.42. Complainant denies that the actual cost so reduced was the sum of $5,193,142.89, and avers that the said sum was $4,906,562.05, and no more, made up as follows:

Total cost of construction	$4,934,702.16
Plus unclaimed wages added for profit purposes only	4,063.91
Gross total	4,938,766.07
Deduct surplus materials	32,196.42
Total cost to bear profit	4,906,569.65

Thirteenth. Replying to paragraph Sixty-fifth of defendant's answer and claim for credit, the complainant denies that the Fleet Corporation accepted any of the vessels mentioned in said paragraph. Complainant avers that the vessels were accepted by the United States and for the United States, through the agency of the Fleet Corporation, and receipted for in that manner. Complainant denies that the Fleet Corporation found that any amount whatsoever had become payable by it to the defendant or the Bethlehem Shipbuilding Corporation, Ltd., on account of the construction of such vessels, and the complainant further denies that the amounts which the Fleet Corporation found on audit should be credited to the defendant were as set forth in columns I, J, K, L, M, N, O, P, and Q of Exhibit 1, attached to defendant's answer. Complainant avers that the amounts which the Fleet Corporation found should be credited by its principal, the complainant, to the Bethlehem Shipbuilding Corporation, Ltd., on account of the construction of said vessels are as set forth in columns 4, 5, 6, 7, 8, 9, 10, 11, and 12 of Exhibit A, hereto attached.

Fourteenth. Replying to paragraph Sixty-sixth of defendant's answer and claim for credit, com-

plainant denies that the amounts paid to the defendant and the Bethlehem Shipbuilding Corporation, Ltd., by the former owners and the Fleet Corporation are as set forth in column R of Exhibit 1, attached to defendant's answer. Complainant avers that the amounts which were paid to the defendant and the Bethlehem Shipbuilding Corporation, Ltd., by the former owners and by the Fleet Corporation, acting as agent of the complainant, and from funds of the complainant are as set forth in column 13 of Exhibit A, hereto attached.

Fifteenth. Replying to paragraph Sixty-seventh of defendant's answer and claim for credit, the complainant admits that the Fleet Corporation has failed and refused to pay the amounts set forth in column S of Exhibit 1, attached to defendant's answer. Complainant avers that none of the amounts set forth in column S of such exhibit is due from or payable by the Fleet Corporation to the defendant or to the Bethlehem Shipbuilding Corporation, Ltd., and complainant further avers that the amounts set forth in said column S of such Exhibit 1 do not correctly represent balances in the accounts between the complainant and the defendant and the Bethlehem Shipbuilding Corporation, Ltd. Complainant avers that through mistakes of fact and mistakes of law the Fleet Corporation, as agent of the complainant, has largely overpaid the Bethlehem Shipbuilding Corporation, Ltd., from moneys of the claimant to an extent the aggregate of which is $1,316,631.07, as shown in column 14 of Exhibit A, hereto attached.

Sixteenth. Replying to paragraph Seventy-third of defendant's answer and claim for credit, com-

plainant repeats and reavers every averment and denial heretofore contained in paragraphs Second to Fifteenth, inclusive, of this reply with the same force and effect as if herein again averred or denied in full. Further replying to said paragraph complainant denies that the defendant or the Bethlehem Shipbuilding Corporation, Ltd., is entitled to any other or further credits on account of the transactions set forth in defendant's answer than those set forth in column 12 of Exhibit A, hereto attached. Complainant further avers that the credits herein admitted do not represent sums which the defendant or the Bethlehem Shipbuilding Corporation, Ltd., is entitled to receive, but only represents credits which should be allowed against the payments made by the complainant to the defendant and to the Bethlehem Shipbuilding Corporation, Ltd., as shown in column 13 of Exhibit A, hereto attached.

Special Reply and Defense to Defendant's Answer and Claim for Credit

Seventeenth. Not waiving, but insisting upon the averments and denials contained in the foregoing reply, but in addition thereto and as a special reply, the complainant avers that the defendant has not presented its claim for credit to the accounting officers of the Treasury of the United States in accordance with Section 951 of the Revised Statutes of the United States for their examination, and the said accounting officers have neither allowed or disallowed said claim in whole or in part, and defendant has not pleaded, and it is not the fact that the defendant is in possession of vouchers not be-

fore in its power to procure or that defendant was prevented from exhibiting a claim for such credit at the Treasury of the United States by absence from the United States or by any unavoidable accident. The complainant therefore avers that the defendant is not entitled to plead any of the credits claimed by the defendant in its answer and claim for credit.

Complainant having fully replied to all the averments contained in the answer and claim for credit, prays judgment in accordance with the prayer contained in the bill of complaint.

GEORGE W. COLES,
United States Attorney for the Eastern District of Pennsylvania.

HENRY P. BROWN,
Special Assistant to the Attorney General.
JOSEPH J. BROWN,
Special Assistant to the Attorney General.
JAMES TALBERT,
Special Assistant to the Attorney General.
CHAUNCEY G. PARKER,
General Counsel,
United States Shipping Board.
RALPH H. HALLETT,
Assistant Counsel,
United States Shipping Board.

COMPLAINANT'S REPLY TO THE CLAIM FOR CREDIT AND COUNTERCLAIM OF THE DEFENDANT, UNION IRON WORKS COMPANY.

(Filed April 15, 1929)

Comes now the complainant, the United States of America, by George W. Coles, United States Attorney for the Eastern District of Pennsylvania, its Solicitor, and for its reply to the claim for credit and counterclaim of the defendant, Union Iron Works Company, states as follows:

First. Complainant avers that the name of the United States Shipping Board Emergency Fleet Corporation was changed to the United States Shipping Board Merchant Fleet Corporation by Act of Congress approved February 11, 1927, known as Independent Offices Appropriation Act, 1928. Hereinafter in this reply the United States Shipping Board Merchant Fleet Corporation will be referred to as the Fleet Corporation.

Second. Replying to paragraph Fifty-fourth of defendant's answer, claim for credit and counterclaim, complainant admits the averments therein contained.

Third. Replying to paragraph Fifty-fifth of defendant's answer, claim for credit and counterclaim, the complainant denies that on or about September 20, 1917, the defendant and the Fleet Corporation, acting as principal, entered into the contracts in writing referred to; and complainant further de-

nies that the Fleet Corporation, on its own behalf, made any agreement or agreements whatever concerning the completion of said ships, or otherwise. Complainant further denies that the Fleet Corporation assumed or agreed to assume any liability whatever in connection with said contracts or said ships. The complainant avers that the ships referred to in said paragraph were requisitioned by the United States, acting through the Fleet Corporation as its agent, on August 3, 1917, and that the President of the United States, acting through the Fleet Corporation as agent, ordered the completion of said vessels. Complainant further avers that contracts for the completion of said vessels were entered into between the defendant and the United States of America, acting through the Fleet Corporation as its agent, and not otherwise. Complainant admits that the defendant agreed on final acceptance of each such vessel to give a bill of sale to the United States in satisfactory form conveying all the right, title, and interest of the shipbuilder in such vessel to the United States. The complainant avers that the contracts entered into between the defendant and the United States provided that for the work of completion the shipbuilders should be paid amounts equal to the payments set forth in the original contracts and not then paid. Complainant further denies that the Fleet Corporation agreed, upon completion of such vessels, a complete audit of the items which should go to make up the price of such vessels would be made by the Fleet Corporation, and that thereupon the balance determined to be due on such vessels should become immediately due and payable. Complainant avers that no such agreement was made by the

Fleet Corporation either in its own behalf or as an agent of the United States, except that as agent of the United States the Fleet Corporation did agree to make an audit of the cost of the ships that were to be completed on a cost-plus basis.

Complainant denies that each and every action taken by the Fleet Corporation under such contracts was taken by it as principal and as the real party in interest thereunder, but avers that each and every action of the Fleet Corporation under such contracts and every transaction connected with the building of said ships was taken as the agent of the United States of America pursuant to the Emergency Shipping Fund Provision of the Urgent Deficiencies Appropriation Act of June 15, 1917, and the Executive Order of the President of the United States designating the Fleet Corporation as the agent of the United States for the purpose of requisitioning ships and securing the completion thereof. Complainant further denies that defendant dealt with the Fleet Corporation as principal, but avers that defendant at all times dealt with the Fleet Corporation solely as an agent of the United States.

Fourth. Replying to paragraph Fifty-sixth of defendant's answer, claim for credit and counterclaim, complainant denies that the contracts referred to were contracts between defendant and the Fleet Corporation, or that the Fleet Corporation, as principal, gave any approval to the completion of the vessels by the Bethlehem Shipbuilding Corporation, Ltd., but avers that such approval was given by the Fleet Corporation, as agent of complainant; and avers that the contracts referred to

were contracts between defendant and the United States of America represented by the Fleet Corporation.

Fifth. Replying to paragraph Fifty-seventh of defendant's answer, claim for credit and counterclaim, the complainant denies that the Fleet Corporation acted in any capacity except as agent of the complainant in entering into any of the agreements mentioned in said paragraph. Complainant avers that the contracts for the construction of the hulls mentioned in said paragraph were changed and modified so that the Bethlehem Shipbuilding Corporation, Ltd., should be entitled to cost plus a profit of $10 per dead-weight ton on such vessels.

Sixth. Replying to paragraph Fifty-eighth of defendant's answer, claim for credit and counterclaim, the complainant denies each and every allegation contained in said paragraph and refers to the allegations contained in paragraphs Fortieth to Forty-eighth Inclusive of Complainant's Complaint, which paragraphs are specifically herein reaverred. Complainant denies that the aggregate of the bonuses paid to the workmen multiplied by the alleged applicable overtime coefficient amounted to the sums set forth in Column K of defendant's Exhibit 3, and avers that the sums set forth in said Column K are inconsistent with the sums stipulated and agreed to by both parties as correct, and inconsistent with the sums set forth in Exhibit 2 attached to the reply of the Bethlehem Shipbuilding Corporation, Ltd., in its suit against the Fleet Corporation No. 11970 in this court, and which said Exhibit 2 correctly sets forth the combined sums of the overtime bonus paid to the workmen, and the

excess over the bonus which was paid to the defendant by the Fleet Corporation, as agent of the United States, without consideration and without any warrant in fact or in law. Complainant avers that the amounts paid by Fleet Corporation on behalf of Complainant to defendant on account of overtime bonus paid to workmen are correctly set forth in Column 6 of Exhibit A, hereto attached.

Seventh. Replying to paragraph Fifty-ninth of defendant's answer, claim for credit and counterclaim, the complainant denies that the Fleet Corporation, as principal, gave any orders or directions to the defendant concerning additions to and omissions from the plans and specifications for the vessels mentioned in said paragraph. Complainant avers that such orders and directions were given by the complainant acting through the Fleet Corporation as agent. Complainant denies that the net cost of such additions and omissions is as set forth in column J of Exhibit 3, attached to defendant's answer, but avers that the proper and correct net cost of such additions and omissions is as set forth in column 5 of Exhibit A, hereto attached.

Eighth. Replying to paragraph Sixtieth of defendant's answer, claim for credit and counterclaim, the complainant denies that on or about February 1, 1918, the Fleet Corporation, as principal or as agent of the complainant, directed the Bethlehem Shipbuilding Corporation, Ltd., to pay certain war-service payments as a part of the regular wages of its employees in addition to the wages provided by the Shipbuilding Labor Adjustment Board. Complainant avers that on or about December 10, 1917, the Fleet Corporation, as agent of the complainant,

notified the Bethlehem Shipbuilding Corporation, Ltd., that on February 1, 1918, the said 10 per cent increase would be effective as a regular permanent part of the wage schedule effective after that date. The complainant denies that the Fleet Corporation, as principal, agreed to reimburse the Bethlehem Shipbuilding Corporation, Ltd., for any of the payments averred in said paragraph, but admits that the Fleet Corporation, as agent of the complainant, agreed to reimburse the defendant for increases due to such awards of the Shipbuilding Labor Adjustment Board and orders given by the Fleet Corporation as agent of the complainant. Complainant denies that the increased costs of labor actually incurred by the Bethlehem Shipbuilding Corporation, Ltd., in the construction of the hulls mentioned in said paragraph were as set forth in column M of Exhibit 3, attached to defendant's answer. Complainant avers that the increased costs of labor actually incurred by the Bethlehem Shipbuilding Corporation, Ltd., for the construction of the hulls mentioned in said paragraph are as set forth in column 8 of Exhibit A, hereto attached.

Ninth. Replying to paragraph Sixty-first of defendant's answer, claim for credit and counterclaim, the complainant denies that the defendant and the Bethlehem Shipbuilding Corporation, Ltd., duly performed all the terms and conditions of all the contracts for said vessels, in that defendant and the Bethlehem Shipbuilding Corporation, Ltd., did not keep accurately the costs of the construction of certain of said vessels. Complainant further denies that any of the said vessels were completed in accordance with the orders of the Fleet Corporation

as principal. Complainant denies that any of said vessels were ever delivered to or accepted by the Fleet Corporation as principal. Complainant avers that such of the vessels as were completed were delivered to and accepted by the United States of America.

Tenth. Replying to paragraph Sixty-second of defendant's answer, claim for credit and counterclaim, the complainant denies that the Fleet Corporation accepted any of the vessels mentioned in said paragraph. Complainant avers that the vessels were accepted by the United States and for the United States, through the agency of the Fleet Corporation, and receipted for in that manner. Complainant denies that the Fleet Corporation found that any amount whatsoever had become payable by it to the defendant or the Bethlehem Shipbuilding Corporation, Ltd., on account of the construction of such vessels, and the complainant further denies that the amounts which the Fleet Corporation found on audit should be credited to the defendant were as set forth in columns I, J, K, L, M, N, O, P, and Q of Exhibit 3, attached to defendant's answer. Complainant avers that the amounts which the Fleet Corporation found should be credited by its principal, the complainant, to the Bethlehem Shipbuilding Corporation, Ltd., on account of the construction of said vessels, are as set forth in columns 4, 5, 6, 7, 8, 9, 10, 11, and 12 of Exhibit A, hereto attached.

Eleventh. Replying to paragraph Sixty-third of defendant's answer, claim for credit and counterclaim, complainant denies that the amounts paid to the defendant and the Bethlehem Shipbuilding Cor-

poration, Ltd., by the former owners and the Fleet Corporation are as set forth in column R of Exhibit 3, attached to defendant's answer. Complainant avers that the amounts which were paid to the defendant and the Bethlehem Shipbuilding Corporation, Ltd., by the former owners and by the Fleet Corporation, acting as agent of the complainant, and from the funds of the complainant are as set forth in lines 22 to 30, inclusive, column 13 of Exhibit A, hereto attached.

Twelfth. Replying to paragraph Sixty-fourth of defendant's answer, claim for credit and counterclaim, the complainant admits that the Fleet Corporation has failed and refused to pay the amounts set forth in column S of Exhibit 3, attached to defendant's answer. Complainant avers that none of the amounts set forth in column S of such exhibit is due from or payable by the Fleet Corporation to the defendant or to the Bethlehem Shipbuilding Corporation, Ltd., and complainant further avers that the amounts set forth in said column S of such Exhibit 3 do not correctly represent balances in the accounts between the complainant and the defendant and the Bethlehem Shipbuilding Corporation, Ltd. Complainant avers that through mistakes of fact and mistakes of law the Fleet Corporation, as agent of the complainant, has largely overpaid the Bethlehem Shipbuilding Corporation, Ltd., from moneys of the claimant to an extent the aggregate of which is $1,316,631.07, as shown in column 14 of Exhibit A, hereto attached.

Thirteenth. Replying to paragraph Seventieth of defendant's answer, claim for credit and counterclaim, complainant repeats and reavers every aver-

ment and denial heretofore contained in paragraphs Second to Twelfth hereof, inclusive, with the same force and effect as if herein again averred or denied in full. Further replying to said paragraph complainant denies that the defendant or the Bethlehem Shipbuilding Corporation, Ltd., is entitled, on account of the matters referred to in said paragraph, to any other or further credits than those set forth in column 12 of Exhibit A, hereto attached. Complainant further avers that the credits herein admitted do not represent sums which the defendant or the Bethlehem Shipbuilding Corporation, Ltd., is entitled to receive, but only represents credits which should be allowed against the payments made by the complainant to the defendant and to the Bethlehem Shipbuilding Corporation, Ltd., as shown in column 13 of Exhibit A, hereto attached.

Fourteenth. Replying to paragraph Seventy-first of defendant's answer, claim for credit and counterclaim, complainant repeats and reavers the denials and averments contained in paragraphs Second to Twelfth, inclusive, of this reply with the same force and effect as if herein again denied or averred in full. Complainant denies that there is any sum whatever due and owing from the complainant or from the Fleet Corporation to the defendant or to the Bethlehem Shipbuilding Corporation, Ltd., and denies that either the defendant or the Bethlehem Shipbuilding Corporation, Ltd., should recover from the complainant the sum of $241,474.57, or any other sum whatever.

Special Reply and Defense to Defendant's Answer, Claim for Credit and Counterclaim

Sixteenth. Not waiving, but insisting upon the averments and denials contained in the foregoing reply, but in addition thereto, and as a special reply, the complainant avers that the defendant has not presented its claim for credit and counterclaim to the accounting officers of the Treasury of the United States in accordance with Section 951 of the Revised Statutes of the United States for their examination, and the said accounting officers have neither allowed or disallowed said claim in whole or in part, and defendant has not pleaded, and it is not the fact that the defendant is in possession of vouchers not before in its power to procure or that defendant was prevented from exhibiting a claim for such credit at the Treasury of the United States by absence from the United States or by any unavoidable accident. The complainant therefore avers that the defendant is not entitled to plead any of the credits claimed by the defendant in its answer, claim for credit, and counterclaim.

Complainant having fully replied to all the averments contained in the answer, claim for credit, and counterclaim, prays judgment in accordance with the prayer contained in the bill of complaint.

GEORGE W. COLES,
United States Attorney for the Eastern District of Pennsylvania.

HENRY P. BROWN,
Special Assistant to the Attorney General.

JOSEPH J. BROWN,
Special Assistant to the Attorney General.

JAMES TALBERT,
Special Assistant to the Attorney General.
CHAUNCEY G. PARKER,
General Counsel, United States Shipping Board.
RALPH H. HALLETT,
Assistant Counsel, United States Shipping Board.

AGREEMENT AND ORDER OF REFERENCE

(Filed May 1st, 1928.)

Whereas by agreement of the parties certain actions at law pending in this Court as of December Sessions, 1925, Nos. 11970, 11972, 11974 and 11976, involving the same, or substantially the same issues of fact and of law as the issues involved in the above entitled proceeding, have been referred to Owen J. Roberts, Esq., as Referee

And whereas the parties desire that the issues of fact and of law in the above entitled proceeding may be referred to the said Owen J. Roberts, Esq., as Special Master, to the end that the entire controversy between the parties may be heard and determined in one proceeding,

It is accordingly hereby agreed, subject to the approval of the Court, between the parties herein, acting through their respective counsel:

1. That the above entitled case be referred to Owen J. Roberts, Esq., Attorney at Law, as special master to hear and determine the issues and report his findings of fact in the form of special findings and his conclusions of law to the Court for its action as hereinafter provided. The special master upon the trial before him of the issues herein shall rule on the admissibility of evidence offered and in all things pertaining to the trial of the case shall have the powers and perform the duties that would belong to the court upon a trial of the case before the Court.

2. The special master shall give to an attorney of record for each of the parties thirty days' previous notice of his intention to file his report on a day to be fixed by him, during which time said parties or their attorneys shall have access to said report and may file exceptions thereto with the special master, and it shall be the duty of the special master upon exceptions being filed to re-examine his report and amend the same if in his opinion such exceptions are well founded.

3. The report of the Special Master and any exceptions thereto filed with him, together with a transcript of the testimony and all exhibits introduced or offered before him showing his rulings on objections made thereto and any exceptions of the parties to his rulings shall be filed by the special master with the Clerk of the Court.

4. Upon the filing of the special master's report either party may move the Court to confirm and adopt the report or to alter or amend it and to confirm and adopt the same as so amended, or to reverse it or send it back to the special master for further proceedings before him. Upon the confirmation and adoption by the Court of the special master's report or of such report as altered or amended by the Court, decree may be entered thereupon as upon a decision of the case by the Court after trial before the Court.

5. At any time after the termination of the trial before the special master either party may move the Court to fix a time within which the special master's report must be filed, and if the report shall not be filed within the time so fixed, unless such time is further extended by the Court, the Court may on

motion of either party terminate the reference and thereupon the trial of the case shall be had before the Court unless the parties shall by stipulation in writing agree upon a new reference thereof.

6. In the event of death or disability of the special master prior to the filing of his report, or the failure of said master to qualify as such or to act herein, no new special master shall be appointed herein except upon the consent of the parties hereto.

UNITED STATES OF AMERICA

By HENRY P. BROWN,
JOSEPH J. BROWN,
Special Assistants to the Attorney General.
GEORGE W. COLES,
United States Attorney for the Eastern District of Pennsylvania.

BETHLEHEM STEEL CORPORATION, BETHLEHEM STEEL COMPANY, FORE RIVER SHIPBUILDING CORPORATION, UNION IRON WORKS COMPANY and BETHLEHEM SHIPBUILDING CORPORATION, LTD.

By CHARLES SINKLER,
RALPH B. EVANS,
Attorneys.

CRAVATH, DE GERSDORFF, SWAINE & WOOD,
Counsel.

ORDER OF REFERENCE

Before Thompson J.

And now, April 30th, 1928, in consideration of the foregoing stipulation, it appearing that the issues of fact and law in the above entitled proceedings are the same, or substantially the same, as the issues involved in certain other actions at law pending in this Court between the parties, which actions by agreement have been referred to Owen J. Roberts, Esq., as referee, and it appearing that the time of the Court and of the parties will be conserved by the appointment of a special master, it is accordingly ordered that the above entitled cause be, and the same is, hereby referred to Owen J. Roberts, Esq., as special master, to hear and determine the issues, and report thereon to the Court, in accordance with the foregoing stipulation, insofar as the same is in accordance with the United States Supreme Court Rules in Equity.

By the Court,

J. W. THOMPSON, *J.*

ORDER APPOINTING SUBSTITUTED MASTER

(Filed March 23, 1931.)

Before Dickinson, J.

And now, this 23rd day of March 1931, by consent of the parties, it is

Ordered that William Clarke Mason, Esquire, be appointed Special Master to succeed the Honorable Owen J. Roberts, with the same effect as if originally so named in the Order of Reference heretofore entered in the above entitled cause, either party to have the right to require that any or all of the testimony be taken de novo and to take additional testimony.

By the Court,

DICKINSON,
D. J.

FINAL DECREE

(Filed Dec. 12, 1938.)

This cause came on to be heard, and was argued by Counsel, and thereupon, upon consideration thereof, it is ordered, adjudged and decreed as follows, viz.

1. That the bill of complaint in this cause be, and it hereby is, dismissed; and

2. That the counterclaims alleged in the respective answers of the defendants Bethlehem Shipbuilding Corporation, Ltd., Bethlehem Steel Company and Union Iron Works Company in this cause be, and they hereby are, dismissed for want of jurisdiction in this Court to give judgment against the complainant herein upon the matters alleged in said counterclaims.

Dated, December 12th, 1938.

By the Court,

(s) DICKINSON,
D. J.

(Seal)

PLAINTIFF'S NOTICE OF APPEAL

(Filed March 10, 1939.)

Notice is hereby given that The United States of America, the plaintiff above named, hereby appeals to the Circuit Court of Appeals for the Third Circuit from that part of the judgment filed in this action on December 12, 1938, dismissing the Bill of Complaint in this cause.

March 10, 1939.

J. CULLEN GANEY,
United States Attorney for the Eastern District of Pennsylvania,
Attorney for The United States of America.
Office and Post Office Address:
Second and Chestnut Streets,
Philadelphia, Pennsylvania.

BON GEASLIN,
General Counsel, United States Maritime Commission,
Attorney for The United States of America.
Office and Post Office Address:
Commerce Building, Washington, D. C.

STATEMENT OF PLAINTIFF-APPELLANT UNITED STATES OF AMERICA OF THE POINTS ON WHICH IT INTENDS TO RELY ON ITS APPEAL FROM THE JUDGMENT

(Filed April 24, 1939.)

Pursuant to Rule 75 (g) of the Federal Rules of Civil Procedure, the statement of the Plaintiff-Appellant, United States of America, of the points on which it intends to rely, on its appeal from the judgment filed December 10, 1938, in the above-entitled cause is as follows:

(1) The District Court erred in dismissing the Bill of Complaint of the Plaintiff herein in the above-entitled cause No. 3315.

(2) The District Court erred in not entering judgment in favor of the Plaintiff herein for the relief prayed for in paragraphs numbered "First to Tenth" inclusive, on pages 35 to 37, inclusive, of its Bill of Complaint in the above entitled cause No. 3315 including but not limited to judgment that the court fix a reasonable and proper cost of construction of the vessels under the contracts in controversy and that defendant, Bethlehem Shipbuilding Corporation, Ltd., account to Plaintiff for all moneys of the United States paid to it in excess of such reasonable and proper cost of construction and pay to Plaintiff the excess over and above such reasonable and proper cost of construction.

(3) The District Court erred in not entering judgment for costs including at least one-half of the compensation of the Special Master, William Clarke Mason, Esq., allowed in the sum of $15,540., against the Defendant, Bethlehem Shipbuilding Corporation, Ltd.

(4) Without limitation of the foregoing paragraphs numbered 1 to 3, inclusive, above, the contracts in controversy in the above-entitled Cause No. 3315 were entered into as a result of the fraudulent representations and actions of the Defendants herein.

(5) Without limitation of the foregoing paragraphs numbered 1 to 3, inclusive, above, the contracts in controversy in the above-entitled Cause No. 3315 were entered into through constructive fraud on the part of the Defendants herein.

(6) Without limitation of the foregoing paragraphs numbered 1 to 3, inclusive, above, the contracts in controversy in the above-entitled Cause No. 3315 were unconscionable and unenforceable.

(7) Without limitation of the foregoing paragraphs numbered 1 to 3, inclusive, above, the contracts in controversy in the above-entitled Cause No. 3315 were entered into on the basis of a mistake of fact.

(8) Without limitation of the foregoing paragraphs numbered 1 to 3, inclusive, above, the Defendants herein failed to prove that they saved material, increased efficiency, or did anything extraordinary or unusual resulting in a benefit to the Plaintiff herein which they were required to do under the contracts in controversy in order to re-

cover profit under the half savings clause of the contracts in controversy.

(9) Without limitation of the foregoing paragraphs numbered 1 to 3, inclusive, above, inasmuch as the evidence does not show that Defendants herein did anything under the half savings clause of the contracts in controversy in the above-entitled Cause No. 3315 which they were not required to do independently of that clause and particularly because Defendants herein failed to show any benefit accrued to the Plaintiff herein under the half savings clause, there was a failure of consideration for any payment under the half savings clause of the contracts in controversy.

(10) Without limitation of the foregoing paragraphs numbered 1 to 3, inclusive, above, the contracts in controversy in the above-entitled Cause No. 3315 are against public policy and hence void.

(11) Without limitation of the foregoing paragraphs numbered 1 to 3, inclusive, above, the representatives of Plaintiff had no power to enter into the contracts in controversy in the above-entitled Cause No. 3315.

(12) Without limitation of the foregoing paragraphs numbered 1 to 3, inclusive, above, Plaintiff had no power to enter into the contracts in controversy in the above-entitled Cause No. 3315.

Dated, April 24, 1939.

J. CULLEN GANEY,
BON GEASLIN,
Attorneys for Plaintiff-Appellant United States of America.

IN THE DISTRICT COURT OF THE UNITED STATES

For the Eastern District of Pennsylvania

No. 3315—March Term—1925

United States of America

vs.

Bethlehem Steel Corporation, Bethlehem Shipbuilding Corporation, Ltd., Bethlehem Steel Company, Fore River Shipbuilding Corporation, Union Iron Works Company

Henry P. Brown, Esq., George W. Coles, Esq., (for plaintiff).

Charles Sinkler, Esq., Ralph B. Evans, Esq., Evans, Bayard & Frick, Esqs., Richardson Dilworth, Esq., (for defendants).

DOCKET ENTRIES

Dec. 12, 1938, Final Decree dismissing bill of complaint and Counter-claims filed. 12/13/38—Noted and Notice mailed.

Dec. 22, 1938, Memorandum Opinion, Dickinson J., sur entry of judgments filed.

1939

Mar. 10, Plaintiff's notice of Appeal filed 3-11-39. Copy to Richardson Dilworth.

Mar. 10, Copy of Clerk's Notice to U. S. Circuit Court of Appeals filed.

Apr. 14, Order of Court extending time to file record on appeal to May 4, 1939 filed.

Apr. 24, Statement of Plaintiff-Appellant of points on which it intends to rely on its appeal filed.

April 24, Order of Court directing transmittal of original papers and exhibits to Court of Appeals filed 4-25-39 noted. Notice waived.

April 24, Stipulation of Counsel as to contents of record on Appeal in lieu of Cross designation by Plaintiff-Appellant filed.

IN THE DISTRICT COURT OF THE UNITED STATES

For the Eastern District of Pennsylvania

No. 3315—March Term—1925

United States of America

vs.

Bethlehem Steel Corporation, Bethlehem Shipbuilding Corporation, Ltd., Bethlehem Steel Company, Fore River Shipbuilding Corporation, Union Iron Works Company

REPORT OF OWEN J. ROBERTS, ESQ., DISQUALIFYING HIMSELF FROM ACTING AS REFEREE, FILED JULY 24, 1930.

Printed at page 511 hereof.

REPORT OF THE SPECIAL MASTER AND REFEREE, DATED AND FILED FEBRUARY 7, 1936, INCLUDING EXHIBITS A AND B THERETO AND THE APPENDIX THERETO CONTAINING REQUESTS OF THE PARTIES FOR FINDINGS AND RULINGS THEREON AND EXCEPTIONS OF THE PARTIES FILED WITH THE SPECIAL MASTER AND REFEREE.

Printed at page 515 hereof.

EXCEPTIONS OF THE UNITED STATES OF AMERICA AND UNITED STATES SHIPPING

BOARD EMERGENCY FLEET CORPORATION TO THE REPORT OF THE SPECIAL MASTER AND REFEREE, FILED FEBRUARY 25, 1936.

Printed at page 714 hereof.

OPINION OF OLIVER B. DICKINSON, JUDGE OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA, UPON EXCEPTIONS FILED BY PLAINTIFF AND DEFENDANT TO THE REPORT OF THE SPECIAL MASTER AND REFEREE, FILED JUNE 3, 1938.

Printed at page 733 hereof.

OPINION OF JUDGE DICKINSON UPON PRAECIPE FOR JUDGMENT, DISALLOWING INTEREST TO PLAINTIFF ON THE JUDGMENT, FILED SEPTEMBER 23, 1938.

Printed at page 749 hereof.

OPINION OF JUDGE DICKINSON UPON MOTION FOR DECREE, ASSESSING COSTS AND THE COMPENSATION OF THE SPECIAL MASTER AND REFEREE AGAINST THE DEFENDANT, FILED DECEMBER 23, 1938.

Printed at page 752 hereof.

STIPULATION OF THE CONTENTS OF THE RECORD ON APPEAL.

Printed at page 774 hereof.

EVIDENCE TAKEN BEFORE WILLIAM CLARKE MASON, ESQ., PAGES 1 TO 1024, FILED APRIL 4, 1931 AND PAGES 606 TO 610, INCLUSIVE, OF THE EVIDENCE BEFORE OWEN J. ROBERTS, ESQ.

Printed at page 815 hereof.

EXHIBITS A, B, D, G-4, G-5, G-6, G-7, G-8, G-9, G-10, G-11, G-12, G-13, G-14, G-15, G-16, G-17, G-18, G-19, G-20, G-21, G-22, G-23, G-24, G-25, G-26, G-27, G-28, G-29, G-30, G-31, G-32, G-33, G-34, G-39, G-40, G-41, G-42, G-45, G-96, G-97, G-101, G-104, G-105, G-107, G-109, G-110, G-112, G-116, G-122, G-124, G-125, G-126, G-127, G-128, G-130, G-131, G-132, G-133, G-134, G-135, G-150, G-154, G-155, G-159, G-160, G-161, G-163, G-170, G-175, G-176, G-177, G-178, G-207, G-208, G-209, B-6, B-7, B-10, B-11, B-14, B-17, B-18, B-19, B-20, B-23, B-24, B-25, B-28, B-29, B-30, B-31, B-33.

Printed at pages 1642-1931 inclusive, hereof.

ORDER OF THE DISTRICT COURT FILED APRIL 1, 1939, PURSUANT TO RULE 75 (i) OF THE FEDERAL RULES OF CIVIL PROCEDURE THAT THE PAPERS AND EXHIBITS MENTIONED THEREIN ADMITTED IN EVIDENCE AT THE SECOND HEARING BE SENT TO THE APPELLATE COURT IN LIEU OF COPIES.

Printed at page 1932 hereof.

CERTIFICATE OF CLERK

United States of America,
Eastern District of Pennsylvania, ss:

I, George Brodbeck, Clerk of the United States District Court in and for the Eastern District of Pennsylvania, do hereby certify that the annexed and foregoing is a true and full copy of so much of the pleas and proceedings: in the cases of Bethlehem Shipbuilding Corporation, Ltd. vs. United States Shipping Board Merchant Fleet Corporation, At Law, No. 11970 December Term, 1925, and United States of America vs. Bethlehem Steel Corporation, Bethlehem Shipbuilding Corporation, Ltd., Bethlehem Steel Company, Fore River Shipbuilding Corporation, Union Iron Works Company, In Equity, No. 3315 March Term, 1925, as per stipulation of Counsel filed, a copy of which is hereto attached, the transcripts of records in the above entitled causes are to include

now remaining among the records of the said Court in my office.

In Testimony whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Philadelphia, this 23rd day of May, A. D. 1939.

GEORGE BRODBECK,
Clerk.

By .....
Deputy Clerk.

(Seal)

7-1550

IN THE

UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 7045. October Term, 1939

UNITED STATES OF AMERICA, PLAINTIFF-APPELLANT, *vs.* BETHLEHEM STEEL CORPORATION, BETHLEHEM SHIPBUILDING CORPORATION, LTD., ET AL., DEFENDANTS-APPELLEES

No. 7046. OCTOBER TERM, 1939

UNITED STATES SHIPPING BOARD MERCHANT FLEET CORP., DEFENDANT-APPELLANT, *vs.* BETHLEHEM SHIPBUILDING CORPORATION, LTD., PLAINTIFF-APPELLEE

And afterwards, to wit, the 16th day of January 1940, come the parties aforesaid by their counsel aforesaid, and this case being called for argument sur pleadings and briefs, before the Honorable John Biggs, Honorable Albert B. Maris, and Honorable William Clark, Circuit Judges, and the Court not being fully advised in the premises, takes further time for the consideration thereof.

And afterwards, to wit, on the 18th day of June 1940, come the parties aforesaid by their counsel aforesaid, and the Court, now being fully advised in the premises, renders the following decision:

In the United States Circuit Court of Appeals for the Third Circuit

No. 7045. October Term, 1939

UNITED STATES OF AMERICA, PLAINTIFF-APPELLANT

v.

BETHLEHEM STEEL CORPORATION, BETHLEHEM SHIPBUILDING CORPORATION, LTD., BETHLEHEM STEEL COMPANY, FORE RIVER SHIPBUILDING CORPORATION, UNION IRON WORKS COMPANY, DEFENDANTS-APPELLEES

No. 7119. October Term, 1939

BETHLEHEM SHIPBUILDING CORPORATION, LTD., PLAINTIFF-APPELLANT

v.

UNITED STATES SHIPPING BOARD MERCHANT FLEET CORPORATION, DEFENDANT-APPELLEE

and

No. 7046. October Term, 1939

UNITED STATES SHIPPING BOARD MERCHANT FLEET CORPORATION, DEFENDANT-APPELLANT

v.

BETHLEHEM SHIPBUILDING CORPORATION, LTD., PLAINTIFF-APPELLEE

Appeals From the District Court of the United States, for the Eastern District of Pennsylvania

Opinion

Filed June 18, 1940

Before BIGGS, MARIS, and CLARK, Circuit Judges.

MARIS, Circuit Judge.

In 1917 this country was at war. The war emergency made it necessary for the Government to take over all ships suitable for war purposes then under construction at the various shipyards throughout the United States and to arrange with shipbuilders for the construction of as many additional vessels as possible and to construct them with the utmost speed. In the fall of that year the United States Shipping Board Emergency Fleet Corporation (now known as United States Shipping Board Merchant Fleet

Corporation and herein referred to as the Fleet Corporation), an agency of the Government, entered into negotiations for the construction of ships by the Bethlehem Shipbuilding Corporation, Ltd. (hereinafter referred to as Bethlehem), a subsidiary of the Bethlehem Steel Corporation, having a number of shipyards and an experienced shipbuilding organization. In these negotiations Bethlehem was represented by two competent shipbuilders, Joseph W. Powell and Harry Brown, and the Fleet Corporation was represented by two equally competent shipbuilding experts, Admiral F. T. Bowles and G. S. Radford, who were advised by and had full opportunity to advise with Daniel H. Cox, a competent naval engineer and estimator, and Chester Cuthell, counsel for the Fleet Corporation. In addition to these representatives the interests of the Fleet Corporation were protected by Charles Piez, its vice president and general manager, who while not previously a shipbuilder was a nationally known business executive of long experience.

Three forms of contract were considered by the negotiators, a lump-sum" contract, a "cost-plus" contract and a "cost plus fixed fee" contract with a "bonus for savings." The representatives of the Fleet Corporation endeavored to get Bethlehem to bid on a lump sum basis but it refused, stating in a letter of December 13, 1917, that "Because of the unprecedented conditions surrounding the Labor and Material market, it is impracticable to estimate within a reasonable percentage what will be the actual cost of construction, and it is therefore impossible to submit fixed prices for any of these vessels, except upon a basis so far above estimated cost that any figure acceptable to this Company would not be acceptable to the Emergency Fleet Corporation. It is proposed, however, that they be constructed on the basis of actual cost plus a fee, with an agreed upon probable cost, this Company to be paid in addition to the fee one-half of any saving that may be made below this cost figure, and with the further provision that the estimated cost figure will be increased due to any increase in rates of wages that may be approved by the Emergency Fleet Corporation."

On December 19, 1917, Admiral Bowles on behalf of the Fleet Corporation wrote Bethlehem requesting it to submit proposals for the construction of certain ships which he specified. Under the same date Bethlehem submitted a written proposal to construct these ships under the bonus for savings form of contract, setting forth in its proposal the estimated cost of the vessels and the fixed profit to be paid. This proposal was the subject of further conference on January 3, 1918, at which Admiral Bowles unsuccessfully tried to persuade Powell to accept lump-sum contracts but was finally persuaded to agree to accept the bonus for

savings form of contract in order to reach any agreement at all. On January 5, 1918, Admiral Bowles and Radford transmitted Bethlehem's proposal to Piez with the following memorandum:

"We hand you herewith the Bethlehem Shipbuilding Corporation's proposal dated December 19, for additional construction at their various plants, amounting in all to 19 vessels, exclusive of tugs. It may be noted that with the exception of three ships, the vessels in question are troop ships and tankers—ships of a type that only real shipbuilders can produce satisfactorily. As is well known, we have been having difficulty in placing such vessels.

"We wish to place on record the fact that the Bethlehem Shipbuilding Corporation's representatives have insisted on comparatively high prices for these vessels; that they have only with difficulty been persuaded to quote us on the types of ships referred to; and, that their attitude has been characterized by an arbitrary refusal to guarantee or stand behind delivery dates. In other words, it was difficult to persuade them to quote even a tentative delivery date, and they refused positively to accede to a bonus and penalty clause for delivery.

"The letter herewith, addressed to the Bethlehem Shipbuilding Corporation, in reply to their proposal, has been prepared for your signature and is now presented with the recommendation that it be signed. While the prices we have agreed to with representatives of the Bethlehem Shipbuilding Corporation are not satisfactory to us, nevertheless, they represent a material reduction from the prices quoted by that corporation. Realizing that the Nation will need these vessels, we have been actuated by the belief that further delay in placing the contracts should be eliminated and we believe that we have made the best compromise possible under very difficult conditions."

Prior to the receipt of this memorandum from Admiral Bowles and Radford, Piez had received a letter from Powell in anticipation of the final conference with Admiral Bowles. In this letter Powell agreed on behalf of Bethlehem "to accept the order to construct these vessels on such terms as may be personally determined by Mr. Charles Piez, the Vice President and General Manager." On January 5, 1918, after receiving from Admiral Bowles and Radford Bethlehem's proposal and their accompanying memorandum reluctantly recommending its acceptance, Piez on behalf of the Fleet Corporation awarded to Bethlehem seven contracts for the construction of a total of 21 tankers, 8 cargo ships, and 20 tugs upon the terms set forth in Bethlehem's proposal. The contracts, which were dated December 31, 1917, were actually signed and delivered about February 1, 1918. Subsequently in March, April, and May six other contracts for the

construction of 19 tankers and 18 cargo ships were executed between the parties upon substantially similar terms. All 13 of these contracts are involved in the present controversy. Five other contracts were also executed, one of them on February 1, 1918, and the others later. With them, however, we are not now concerned.

The total estimated cost of the 86 vessels involved, as set out in the contracts, was $119,750,000.00. The actual base cost of the ships as built was $92,990,520.91 and Bethlehem has been paid under the contracts the actual base cost of the ships, $92,990,520.91, the cost of extras, $16,381,432.15, fixed profits specified in the contracts, $11,962,400.00, and bonus for savings to the amount of $8,093,156.60. It will be seen that the total bonus for savings payable under the terms of the contracts would exceed $13,000,000.00, but the Fleet Corporation after paying Bethlehem $8,093,156.60 on this account declined to pay any more. A sum in excess of $5,000,000.00 is accordingly claimed by Bethlehem to be still due it from the Fleet Corporation.

The controversy with regard to the bonus for savings resulted in the institution of two suits in the District Court for the Eastern District of Pennsylvania. One was a suit in equity brought by the United States against Bethlehem Steel Corporation, Bethlehem Shipbuilding Corporation, Ltd., and certain subsidiary corporations for an accounting and to recover sums paid to the defendants or some of them under the contracts above mentioned. The other was an action at law by Bethlehem against the Fleet Corporation to recover the balance of the bonus for savings claimed by Bethlehem under the contracts. A jury trial was waived in the law action and both suits were referred to a special master and referee for hearing. The special master and referee made findings of fact and conclusions of law and recommended the dismissal of the Government's bill in the equity case and the entry of judgment in the action at law for Bethlehem against the Fleet Corporation for $5,272,075.10, with interest from specified dates at the rate of 2% per annum. Exceptions having been filed, the district court upon consideration of the report of the special master and referee dismissed the bill in equity, entered judgment in the action at law for Bethlehem in the amount of $5,272,075.10, but without interest. The United States has appealed from the decree dismissing the bill in equity (No. 7045). From the judgment entered against it in the action at law the Fleet Corporation has appealed (No. 7046). Bethlehem has taken a cross-appeal in the action at law from the refusal of the district court to allow interest on the judgment entered in its favor (No. 7119).

In the pleadings and in the court below the chief contention of the Government was that Bethlehem was guilty of fraud in

the making of the ship construction contracts to which we have referred. Both the master and the court below held that the charge of fraud in the making of the contracts was without foundation. So far as fraud in the ordinary sense is concerned we think that the evidence fully supports these findings. The Government, however, contends in this court that Bethlehem, by misleading statements and by withholding information, induced the Fleet Corporation's representatives to believe that Bethlehem's estimates of the construction cost of the vessels in question were fair and reasonable, and that the Fleet Corporation's representatives relied upon Bethlehem's express and tacit representations, and relying thereon executed the contracts under consideration. Under the circumstances, argues the Government, there was a duty of full disclosure resting on Bethlehem so that not having made such disclosure it must be held guilty of fraud. We have carefully considered the record in the light of this contention and we are compelled to conclude that it is not sustained by the testimony, which in our judgment fully supports the findings of the master and the district court that at the time the contracts were negotiated conditions both as to labor, material, and transportation, were such that it was impossible to make an accurate estimate of cost, that the estimates submitted by Bethlehem and prepared for it by its representative Brown were fairly and honestly made and as accurate as could be expected under the uncertain conditions then prevailing, that they were not intended to represent close estimates of actual cost and that they were not so understood, accepted, or relied on by the representatives of the Fleet Corporation. On the other hand the evidence supports the finding of the special master that it was understood that Bethlehem intended these estimated cost figures to be sufficiently large to assure a bonus for savings at least large enough to offset all excess profits and war taxes which it might have to pay as a result of the contracts and that the estimated cost figures finally inserted in the contracts were arrived at by a process of barter and trade carried on by experienced and competent shipbuilders on both sides dealing at arm's length.

It is of course obvious that these negotiations took place in time of war when the need of the Government for ships was extremely urgent and the necessity of reaching an agr ement with Bethlehem, therefore, vital. It is equally clear that Bethlehem insisted upon assuring itself a margin of profit which in view of the necessities of the Government was so large as to indicate an attitude of commercial greed but little diluted with patriotic feeling. There is no doubt that this attitude on the part of Bethlehem was deeply resented by the Government representatives, but the latter were faced with the alternative of either agreeing to

Bethlehem's terms or taking possession of its shipyards and having the Government itself construct the vessels. We think the record clearly indicates that the Government representatives felt that the latter course could not have accomplished the shipbuilding program with the speed which was essential. It was Bethlehem's existing shipbuilding organization that was necessary to insure success to the program of the Fleet Corporation. Consequently the Government representatives, feeling as they did that Bethlehem's organization was necessary to their program, were obliged to accept the terms offered by Bethlehem. This they did with full knowledge, as we have said, that the estimated cost figures included in the contracts did not represent close approximations but were so prepared as to assure to Bethlehem substantial additional profits by way of the bonus for savings. It follows that while Bethlehem may be condemned for having taken advantage of the Nation's necessities to secure inordinate profits it cannot be charged with having misrepresented the facts to the Government's representatives.

The profits to which Bethlehem claims to be entitled amount to approximately 20% of the cost of the ships which it constructed. These profits are undoubtedly very large, especially when it is considered that Bethlehem took no risk, and it can hardly be denied that Bethlehem took advantage of the war emergency to drive a hard bargain with the Government. The Government contends that these profits are so exorbitant and unconscionable as to render the contracts unenforceable, at least to the extent of the bonuses for savings. Hume v. United States, 132 U. S. 406, is relied upon in support of this contention. It appears that in that case, apparently through an error in not substituting "hundredweight" for "pound" in a Government contract, the Government agreed to pay a price for certain supplies which was 35 times their highest and 100 times their lowest market value. The Supreme Court held that the contract was so extortionate and unconscionable on its face as to raise the presumption of fraud in its inception and denied recovery for more than the fair market value of the supplies. The court referred to the language of Lord Hardwicke in Earl of Chesterfield v. Janssen, 2 Ves. Sen. 125, 155, 28 Eng. Reprint 82, referring to fraud of this type: "2. It may be apparent from the intrinsic nature and subject of the bargain itself; such as no man in his senses and not under delusion would make on the one hand, and as no honest and fair man would accept on the other; which are unequitable and unconscientious bargains; and of such even the common law has taken notice."

There is, however, evidence in the present case that the cost (including the bonus for savings) of the ships built by Bethlehem

was no more than many other ships built for the Government at that time on both lump-sums and cost-plus contracts. In the light of that evidence it can hardly be said that the Fleet Corporation was under any delusion when it made the contracts involved in this case. Consequently they cannot be held to be so unconscionable and extortionate as to be unenforceable under the rule of Earl of Chesterfield v. Janssen and Hume v. United States. It should in fairness be said that the profits derived by Bethlehem from these contracts have been considered only in relation to the actual cost of the ships. It must be recalled, as the special master pointed out in his report, "that Bethlehem was an old line shipbuilding company, carrying the burdens of idle invested capital over long-time periods, the maintenance of an experienced and expensive organization, which, during periods of inactivity in the shipbuilding industry, probably was not productive of overhead, such as maintenance, taxes, and other carrying charges. All of these, however, were charges incident to the standby service rendered by Bethlehem, to enable it to perform active service when the needs of the Government might require it. It may well be, as Bethlehem contends, that these factors must have been taken into consideration by the representatives of the Fleet Corporation in their determination that, regardless of the opportunity which the contracts would afford to Bethlehem for substantial profits, it was worth the extra cost, if any, to the Government, to place the contracts with an old line company and to insure the continuous service of Bethlehem so long as the war needs might call for it."

The Government strongly urges that Bethlehem has not performed the obligation upon which its right to the bonus for savings depends and hence is not entitled to the additional bonus which the district court has awarded to it but should be required to repay the bonus already paid it. Its argument is based upon the premise that the bonus for savings was limited in its application to savings resulting from increased efficiency. We think that the premise is without foundation in the record and the argument consequently falls. There is nothing in the contracts themselves to indicate that savings resulting from increased efficiency alone was intended to be compensated for. The evidence fully supports the master's finding that "Bethlehem was to participate in savings however earned, but expected to produce savings by increased efficiency." It must be concluded that the contracts were entire and that the bonus for savings formed part of the consideration for Bethlehem's obligation to build the ships. The ships having been built, Bethlehem is entitled to the consideration agreed upon unless, as is urged by the Government, the provisions for a bonus for savings were against public policy and,

therefore, invalid and unenforceable. We do not so regard them.

On the contrary it appears to us that this form of contract was a desirable one from the standpoint of both the Government and the shipbuilder. It was preferable to a "lump-sum" contract since under the conditions of uncertainty then existing a lump-sum price would necessarily have to be determined upon a basis sufficiently high to protect the shipbuilder against all possible increases in cost. The form of contract here used was likewise preferable to an ordinary "cost-plus" contract since it provided an incentive to the shipbuilder both to keep down cost and to expedite the work. We agree with the Circuit Court of Appeals for the Sixth Circuit, which in Dayton Airplane Co. v. United States, 21 F. 2d 673, had a similar contract before it, that this form of contract was a proper one and not against public policy. and that the bonus for savings provision which formed part of the consideration for Bethlehem's agreement to build the ships may not, alone of all the provisions in the contract, be set aside as unenforceable and void. We need only add that the record contains some evidence tending to show that the savings resulted, in part at least, from increased efficiency.

One other point raised by the Fleet Corporation in its appeal in the action at law must be considered. The court below awarded the compensation of the referee as costs in that action alone. The Fleet Corporation argues that his compensation should have been divided between the action at law and the suit in equity. We think, however, that the disposition of this matter by the district court was within its discretionary power and that under the circumstances of this case an abuse of discretion has not been shown.

This brings us to the consideration of the appeal of Bethlehem from the action of the court in refusing to award it interest for any period prior to judgment upon its claim in the action at law. The determination of this question requires a consideration of the nature of Bethlehem's claim. Was it merely an action brought upon the contracts to recover the balance of the price stipulated in the contracts, as Bethlehem argues, or was it essentially an action to recover damages for a breach of the contracts, as the Fleet Corporation urges.

Each of the contracts provided in Article XIX that "On the completion, a complete audit of the total of the cost of said vessel or vessels shall be made together with a determination of the revised estimated cost as hereinbefore provided, and thereupon the balance of said fixed sum for profit and any additional profit over and above said * * * [fixed sum] determined as hereinbefore provided shall become immediately due and payable."

Article XVII of each of the contracts provided that the actual cost of the vessels should be determined, inter alia, as follows:

"For the purposes of this contract, actual cost of the construction of the vessels shall include the following, and items similar thereto in principle:

"(a) * * *

"(b) A proper proportion of running expenses, including ordinary rentals, cost of ordinary repairs, and maintenance, * * *

"(c) A proper proportion of interest accrued within the taxable year on bonds or other debts * * * of which shall be used, or shall have been or shall be invested in plant, equipment, etc., that shall be used, in the performance of the work under this contract.

"(d) * * *

"(e) A proper proportion of physical losses actually sustained within the taxable year in connection with the construction of the vessels under this contract, including losses from fire, flood, * * *

"(f) A reasonable allowance, according to the condition, for depreciation of values of the property and plant of the Contractor used in connection with the work under this Contract. * * *".

An audit was completed about September 1, 1922. Bethlehem argues that it was entitled to interest from the date of this audit. The record discloses, however, that the determination of a "proper proportion" of and a "reasonable allowance" for many of the items making up actual cost was in dispute between Bethlehem and the Fleet Corporation and that the audit did not and could not settle these disputes. Questions of propriety and reasonableness obviously cannot be determined by the mathematical computations of accountants, but, if they cannot be agreed upon by the parties involved, may only be settled by the exercise of the judicial function. It follows, we think, that Bethlehem's claim was neither certain nor capable of being made certain prior to its adjudication by the district court. Bethlehem's suit must, therefore, be classified as an action seeking the liquidation of damages for the breach of a contract rather than a suit brought upon a contract for a sum certain due thereunder.

The view which we take of the nature of the action renders it unnecessary for us to decide the interesting question as to whether the place of performance was Pennsylvania, in which state the checks in payment were to be received by Bethlehem, or the District of Columbia, where the checks were to be mailed by the Fleet Corporation. This is for the reason that under the law of both jurisdictions the allowance of interest prior to judgment was discretionary with the district court. The law of the District of Columbia upon this question is embodied in Section 8, Title 17 of the District of Columbia Code, which is in part as follows:

"8. Interest on judgments for damages.—In an action to recover damages for breach of contract the judgment shall allow interest on the amount for which it is rendered from the date of the judgment only; but nothing herein shall forbid the jury, or the court, if the trial be by the court, from including interest as an element in the damages awarded, if necessary to fully compensate the plaintiff. * * *"

Likewise it is well settled in Pennsylvania that in an action to recover unascertained damages for a breach of contract the allowance of interest prior to judgment is discretionary. Williams v. Craig, 1 Dallas (Pa.) 313; Richards v. Citizens Nat. Gas Co., 130 Pa. 37, 18 A. 600; Crawford's Estate, 313 Pa. 127, 169 A. 438; McDermott v. McDermott, 130 Pa. Super. 127, 196 A. 889.

It will be seen that both jurisdictions are in line with the modern rule that the allowance of interest in a case such as this should be governed by equitable principles. Board of Comm'rs. v. United States, 306 U. S. 343, 352. This rule is well expressed in the Restatement of the Law of Contracts, § 337, as follows:

"If the parties have not by contract determined otherwise, simple interest at the statutory legal rate is recoverable as damages for breach of contract as follows:

"'(a) Where the defendant commits a breach of a contract to pay a definite sum of money, or to render a performance the value of which in money is stated in the contract or is ascertainable by mathematical calculation from a standard fixed in the contract or from established market prices of the subject matter, interest is allowed on the amount of the debt or money value from the time performance was due, after making all the deductions to which the defendant may be entitled.

"'(b) Where the contract that is broken is of a kind not specified in Clause (a), interest may be allowed in the discretion of the court, if justice requires it, on the amount that would have been just compensation if it had been paid when performance was due.'"

Under the circumstances of this case we are entirely clear that justice does not require the allowance of interest and that the district court properly exercised its discretion in refusing to make such an allowance.

The decree in the suit in equity and the judgment in the action at law are both affirmed.

A true Copy:
Teste:

Clerk of the United States Circuit Court of Appeals for the Third Circuit.

In the United States Circuit Court of Appeals for the Third Circuit

No. 7045. October Term, 1939

UNITED STATES OF AMERICA, PLAINTIFF-APPELLANT *vs.* BETHLEHEM STEEL CORPORATION, BETHLEHEM SHIPBUILDING CORPORATION, LTD., BETHLEHEM STEEL COMPANY, FORE RIVER SHIPBUILDING CORPORATION, UNION IRON WORKS COMPANY, DEFENDANTS-APPELLEES

Appeal from the District Court of the United States, for the Eastern District of Pennsylvania

This cause came on to be heard on the transcript of record from the District Court of the United States, for the Eastern District of Pennsylvania, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged, and decreed by this Court that the decree of the said District Court in this cause be, and the same is hereby affirmed.

Philadelphia, June 18, 1940.

ALBERT B. MARIS,
Circuit Judge.

[Endorsements:] Order Affirming Decree Received & Filed June 18, 1940. William P. Rowland, Clerk.

No. 7046. Term, 1939

UNITED STATES SHIPPING BOARD MERCHANT FLEET CORPORATION, DEFENDANT-APPELLANT, *vs.* BETHLEHEM SHIPBUILDING CORPORATION, LTD., PLAINTIFF-APPELLEE

On appeal from the District Court of the United States for the Eastern District of Pennsylvania

This cause came on to be heard on the transcript of record from the District Court of the United States, for the Eastern District of Pennsylvania, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this case be, and the same is hereby affirmed.

Philadelphia, June 18, 1940.

ALBERT B. MARIS,
Circuit Judge.

[Endorsements:] Order Affirming Judgment Received & Filed June 18, 1940. William P. Rowland, Clerk.

UNITED STATES OF AMERICA, *Eastern District of Pennsylvania, Third Judicial Circuit, Set.*

I, Wm. P. Rowland, Clerk of the United States Circuit Court of Appeals for the Third Circuit, do hereby certify the foregoing to be a true and faithful copy of the original Transcript of Record, Volume III, and proceedings in this court in the cases of United States of America, plaintiff-appellant vs. Bethlehem Steel Corporation, et al., defendants-appellees, No. 7045; and United States Shipping Board Merchant Fleet Corporation, defendant-appellant vs. Bethlehem Shipbuilding Corporation, Ltd., plaintiff-appellee, No. 7046, on file, and now remaining among the records of the said Court, in my office.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said Court, at Philadelphia this 5th day of July in the year of our Lord one thousand nine hundred and forty and of the Independence of the United States the one hundred and sixty-fifth.

[SEAL]

WM. P. ROWLAND,
Clerk of the U. S. Circuit Court of Appeals, Third Circuit.

U. S. GOVERNMENT PRINTING OFFICE: 1940

Supreme Court of the United States

No. 362. October Term, 1940.

Order allowing certiorari

Filed October 14, 1940

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Third Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Stone, Mr. Justice Roberts, and Mr. Justice Murphy took no part in the consideration and decision of this application.

Supreme Court of the United States

No. 363. October Term, 1940.

Order allowing certiorari

Filed October 14, 1940

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Third Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Stone, Mr. Justice Roberts, and Mr. Justice Murphy took no part in the consideration and decision of this application.

U. S. GOVERNMENT PRINTING OFFICE: 1941